

Alpine **COURT REPORTING**

Judith Pinborough Zimmerman, Ph. D.
vs.
University of Utah
Case No. 2:13cv1131



Deposition of: Judith Zimmerman
Date Taken: September 16, 2015

Alpine Court Reporting
Locations in Salt Lake City and Provo
801-691-1000

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September 16, 2015

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IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

JUDITH PINBOROUGH
ZIMMERMAN, Ph.D.,
Plaintiff,
V. Case No. 2:13cv1131
UNIVERSITY OF UTAH,
Defendant.

DEPOSITION OF JUDITH ZIMMERMAN

TAKEN: September 16, 2015

9:11 a.m. to 5:59 p.m.

LOCATION: UTAH ATTORNEY GENERAL'S OFFICE
Heber Wells Building
160 East 300 South
Sixth Floor
Salt Lake City, Utah 84114

Reported by: DONNA M. WARD, CSR, RPR

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<p>09:14:26 1 objections on the record, you are -- you do have to</p> <p>09:14:29 2 answer all of my questions unless something that I asked</p> <p>09:14:32 3 happens to be privileged, which I'm not going to ask you</p> <p>09:14:36 4 anything that is privileged.</p> <p>09:14:37 5 A. Okay.</p> <p>09:14:38 6 Q. Is there anything -- did you take anything</p> <p>09:14:41 7 this morning? Are you under any substances that would</p> <p>09:14:43 8 prevent you from answering any of my questions truthfully</p> <p>09:14:47 9 this morning?</p> <p>09:14:47 10 A. No.</p> <p>09:14:49 11 Q. Do you have any health issues that would</p> <p>09:14:51 12 prevent you from answering my questions truthfully this</p> <p>09:14:55 13 morning?</p> <p>09:14:56 14 A. Just nervous.</p> <p>09:14:56 15 Q. Yes, that is understandable. Okay, so I'm</p> <p>09:15:02 16 going to hand what is a copy of the first amended</p> <p>09:15:07 17 complaint in this matter. Do you recognize this</p> <p>09:15:11 18 document?</p> <p>09:15:11 19 A. Yes.</p> <p>09:15:12 20 Q. Okay, and we'll begin the deposition this</p> <p>09:15:17 21 morning just by going through it. I would like you to</p> <p>09:15:21 22 first turn to Paragraph 9, which is on Page 3. On about</p> <p>09:15:33 23 Line 3, it says, quote: "She was subjected to</p> <p>09:15:40 24 long-standing discrimination by McMahon and the</p> <p>09:15:46 25 department." Do you see that line?</p>	<p>09:15:47 1 A. Yes.</p> <p>09:15:48 2 Q. Approximately when did Dr. McMahon first</p> <p>09:15:53 3 start doing anything that you considered to be</p> <p>09:15:57 4 discriminating against you?</p> <p>09:16:01 5 A. During the hiring process.</p> <p>09:16:04 6 Q. Okay. What did you consider to be</p> <p>09:16:07 7 discriminating? So this would have been around 2005; is</p> <p>09:16:12 8 that correct?</p> <p>09:16:12 9 A. It would have been December 2005 through</p> <p>09:16:16 10 2006.</p> <p>09:16:19 11 Q. But you were hired in 2005?</p> <p>09:16:23 12 A. Yes.</p> <p>09:16:24 13 Q. Okay. What was discriminating during the</p> <p>09:16:28 14 hiring process? Can you describe specifics?</p> <p>09:16:32 15 A. I was promised a faculty, assistant research</p> <p>09:16:37 16 faculty position and I didn't receive it.</p> <p>09:16:39 17 Q. Okay.</p> <p>09:16:41 18 A. In a timely manner.</p> <p>09:16:42 19 Q. How did he make these promises to you?</p> <p>09:16:47 20 A. How did he make these promises to me?</p> <p>09:16:49 21 Q. Yes.</p> <p>09:16:50 22 A. Verbally and I was asked to provide outside</p> <p>09:16:58 23 letters, as well as inside letters, and Dr. Grosser</p> <p>09:17:06 24 indicated they would be processing me as a regular</p> <p>09:17:09 25 faculty position.</p>

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<p>09:17:10 1 Q. Okay, so was anybody else present when you 09:17:16 2 had these discussions? So who did you have these 09:17:19 3 discussions with? Was it Dr. McMahon or was it Dr. 09:17:26 4 Grosser? 09:17:26 5 A. It was -- it was files, personnel files that 09:17:28 6 were going back and forth. I thought they were 09:17:32 7 processing it as an assistant research faculty position 09:17:37 8 from the beginning. 09:17:38 9 Q. Okay, so we have at the time Dr. Grosser was 09:17:43 10 the chair, not Dr. McMahon -- 09:17:45 11 A. Right. 09:17:46 12 Q. -- right? Okay, and so you provided -- and 09:17:55 13 at the time did you provide all of the letters that were 09:18:02 14 required for you -- 09:18:05 15 A. Yes. 09:18:05 16 Q. -- to be a research -- what was required for 09:18:17 17 you to be a research candidate? 09:18:21 18 A. Yes. 09:18:21 19 Q. Okay, and it's your testimony that, even 09:18:24 20 though you provided everything, the university didn't 09:18:28 21 make you a research professor? 09:18:31 22 A. I provided everything that was asked of me. 09:18:34 23 Q. Okay. Who did you provide that to? 09:18:35 24 A. It went -- the documents I believe went to 09:18:40 25 Dr. Grosser's office.</p>	<p>09:18:42 1 Q. Okay. 09:18:45 2 A. And his administrative assistant. 09:18:47 3 Q. So if this occurred back in 2005, why did you 09:19:01 4 wait until December 14th of 2012 to bring anything to the 09:19:09 5 attention of the OEO? 09:19:11 6 A. I brought my concerns to other people long 09:19:15 7 before that. 09:19:16 8 Q. Who did you bring those concerns to? 09:19:18 9 A. So which concerns? I'm confused. 09:19:22 10 Q. You believed that you were discriminated 09:19:24 11 against during the hiring process. 09:19:26 12 A. Yes. 09:19:27 13 Q. So why didn't you bring those concerns to 09:19:32 14 anybody? 09:19:32 15 A. I thought it had been processed that way. 09:19:36 16 Q. Okay. 09:19:37 17 A. I didn't know it hadn't been processed that 09:19:40 18 way. 09:19:40 19 Q. But you subsequently got a letter in 2008? 09:19:54 20 A. Correct. 09:19:55 21 Q. That didn't make clear that you became a 09:20:00 22 research professor until 2008? 09:20:02 23 A. Say that again. 09:20:04 24 Q. You didn't get your offer letter clarifying 09:20:09 25 that you became a research professor until 2008?</p>
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<p>09:20:12 1 A. I did not, but I didn't know I was supposed 09:20:16 2 to. 09:20:19 3 Q. Okay, so -- so -- so why did you think that 09:20:31 4 you -- why did you think that -- what did you make of 09:20:34 5 that letter that you got in 2008 that was your offer 09:20:39 6 letter making you a research professor officially? 09:20:41 7 A. What did I make of it? 09:20:43 8 Q. Yes, why did you think the university gave 09:20:47 9 you a letter of 2008 clarifying that you were a research 09:20:51 10 professor in 2008? 09:20:53 11 A. I thought it was because they changed 09:20:56 12 chairmans and he was just clarifying it and he was doing 09:21:03 13 different parameters of the same position. 09:21:07 14 Q. But the letter made it very clear that you 09:21:16 15 were -- that you were on an annual contract and that you 09:21:21 16 were on a research track. 09:21:25 17 A. Yes. 09:21:26 18 Q. Let's -- let me -- let's turn to that offer. 09:21:31 19 A. But I already thought I was on a research 09:21:35 20 track. 09:21:44 21 Q. Why would you need to be told that you were 09:21:45 22 on a research track if you were already on a research 09:21:50 23 track? 09:21:51 24 A. He was changing -- McMahon gave me benefits. 09:21:57 25 I had not had benefits before.</p>	<p>09:22:10 1 Q. So let me show what has been previously 09:22:13 2 marked as Exhibit No. 9. Have you seen that letter 09:22:46 3 before? 09:23:01 4 A. Yes. 09:23:02 5 Q. And what's the date on the top? 09:23:05 6 A. November 30th, 2008. 09:23:08 7 Q. And the letter says -- this letter offers you 09:23:16 8 a position as a research assistant professor; correct? 09:23:20 9 A. Correct. 09:23:21 10 Q. It doesn't say this letter renews your 09:23:23 11 position as a research assistant professor; correct? 09:23:28 12 A. No. 09:23:35 13 MR. ROBINSON: No, that's not correct or, no, 09:23:37 14 it doesn't say that? The way the question was answered, 09:23:40 15 I think the answer may be, yes, that's correct. 09:23:43 16 THE WITNESS: It was offering me a different 09:23:46 17 position -- the same position with different benefits. 09:23:46 18 BY MS. DONOSSO: 09:23:52 19 Q. Why was it offering you a different position? 09:23:54 20 A. It was offering me a different position in 09:23:57 21 terms of the salary and benefits. 09:24:01 22 Q. Actually it says this position will be 09:24:05 23 contingent upon approval by our promotion, retention and 09:24:10 24 tenure committee. So how could it be a -- how could it 09:24:15 25 be renewing a position if it was contingent upon</p>

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09:24:18	1	approval?	09:25:39	1	Q. But you didn't and, therefore, now it was
09:24:19	2	A. I thought it had already been approved but I	09:25:43	2	being corrected and you were beginning your term as a
09:24:23	3	also thought the changes in the parameters of the offer	09:25:46	3	research professor?
09:24:26	4	were changing that needed to be approved by this	09:25:49	4	A. I don't understand your question.
09:24:29	5	committee as well.	09:25:51	5	Q. So when Dr. McMahon became chair, he
09:24:33	6	Q. Okay, so the letter goes on to say: "Dr.	09:26:00	6	processed your appointment so that you would be a
09:24:38	7	McMahon will serve as your mentor and supervisor." Do	09:26:03	7	research assistant professor and your term as a research
09:24:42	8	you see that?	09:26:08	8	professor began and, therefore, that is why you got this
09:24:42	9	A. Yes.	09:26:11	9	letter, this offer letter?
09:24:43	10	Q. And there are three major responsibilities	09:26:13	10	A. I saw it as only my term under McMahon as
09:24:46	11	associated with this position; right?	09:26:17	11	chairman. I thought it had already been processed under
09:24:51	12	A. Yes.	09:26:20	12	Grosser.
09:24:51	13	Q. And, now, following that, it says: "The	09:26:21	13	Q. Okay, but you understand that that's not what
09:24:56	14	initial term of your appointment will begin on March 1st,	09:26:25	14	this letter says?
09:25:02	15	2009." If this was a continuing position, why would the	09:26:30	15	A. All this says to me is this is an offer for
09:25:07	16	letter specify that this was your initial term of your	09:26:34	16	this one year.
09:25:10	17	appointment?	09:26:35	17	Q. Okay. That's my next point. You understand
09:25:11	18	A. I think that my appointment was not processed	09:26:38	18	that this is for the initial year and that it's
09:25:16	19	properly by Dr. Grosser and McMahon in 2005.	09:26:41	19	renewable, that this also makes very clear that your
09:25:21	20	Q. Or could it be because before you were an	09:26:48	20	employment with the university was renewal year after
09:25:26	21	adjunct professor and now you're becoming a research	09:26:51	21	year. Was that clear to you based on this letter?
09:25:28	22	professor and there is a difference in the definition of	09:26:54	22	A. That was clear to me in 2005.
09:25:32	23	those two terms?	09:26:58	23	Q. So you understood that every year the
09:25:33	24	A. I thought I had an assistant, a research	09:27:01	24	university would renew your contract every year?
09:25:36	25	assistant professor position already.	09:27:04	25	A. What I didn't understand was why I was going
Page 15			Page 16		
09:27:08	1	through RPT if it was a yearly contract.	09:28:46	1	Q. Renewable year after year?
09:27:12	2	Q. But you understood that you were not a tenure	09:28:50	2	A. Correct.
09:27:15	3	professor; correct?	09:28:50	3	Q. Okay, so this provided you with the
09:27:16	4	A. Correct.	09:28:55	4	responsibilities associated with this position. Did you
09:27:16	5	Q. And you understood that you were on an annual	09:28:57	5	understand that?
09:27:19	6	contract?	09:28:57	6	A. Yes.
09:27:20	7	A. Yes.	09:28:58	7	Q. Okay, and you understood this letter, this
09:27:20	8	Q. Okay.	09:29:07	8	offer letter, specified, quote: "Your appointment will
09:27:22	9	A. During this timeframe.	09:29:13	9	be subsequently renewed each year thereafter contingent
09:27:24	10	Q. What do you mean by this timeframe? You were	09:29:16	10	on your progress and the availability of funds for the
09:27:29	11	always on an annual contract.	09:29:19	11	successive terms of one years, unless either you or the
09:27:31	12	A. I never got a contract after this year.	09:29:24	12	university gives you written notice for the other of its
09:27:36	13	Q. Well, because you were a probationary	09:29:27	13	intent not to renew your appointment." Did you see that,
09:27:43	14	employee, right, for the seven-year period that you were	09:29:32	14	that statement in the letter?
09:27:47	15	there. Did you ever go look at this policy that was	09:29:33	15	A. I see that. What I -- what I understood from
09:27:51	16	cited in this offer letter?	09:29:37	16	this is that it was a one year contract only and that I
09:27:52	17	A. No.	09:29:40	17	would get a contract the following year.
09:27:53	18	Q. Okay, so let me go -- and why didn't you go	09:29:43	18	Q. But according to the terms of the letter,
09:28:22	19	look at the policy in this website?	09:29:47	19	unless the contract wasn't renewed, they didn't need to
09:28:28	20	A. I trusted that the university would be honest	09:29:51	20	give you a letter year after year, unless they gave you
09:28:31	21	with me.	09:29:55	21	written notice otherwise. Did you see that in the
09:28:31	22	Q. But do you understand that the policy on this	09:29:57	22	letter?
09:28:36	23	website would provide you the resources so that you would	09:29:59	23	A. It's in the letter.
09:28:41	24	understand the terms of this offer letter?	09:30:02	24	Q. Okay. Did you also see in Paragraph 4 where
09:28:43	25	A. This offer letter was only for one year.	09:30:13	25	it states: "As an employee of the university, you will

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<p>09:30:16 1 be required to comply with all applicable policies and 09:30:19 2 procedures of the university?" 09:30:20 3 A. Yes. 09:30:20 4 Q. Okay, and also where it states: "University 09:30:27 5 policies are available online," and it references the 09:30:35 6 manuals and references the site where you can go as an 09:30:39 7 employee and review those? 09:30:41 8 A. Yes. 09:31:56 9 Q. Okay. 09:31:56 10 (Whereupon Exhibit 73 was marked for identification.) 09:31:56 11 BY MS. DONOSSO: 09:31:58 12 Q. Do you recognize this document? 09:31:59 13 A. No. 09:31:59 14 Q. Okay, so this is the university's policy that 09:32:06 15 explains research track appointments and I'll give you an 09:32:19 16 opportunity to review it, since you've never seen it 09:32:22 17 before. 09:32:49 18 A. Okay. 09:32:49 19 Q. Okay. In the middle of Paragraph 1 where it 09:33:00 20 says research track, do you see where it states: "Annual 09:33:09 21 reappointment reviews are conducted until the faculty 09:33:14 22 member has completed a probationary period of seven years 09:33:19 23 if initially appointed as a research instructor or 09:33:22 24 research assistant professor." Did you see that part? 09:33:26 25 A. I see it.</p>	<p>09:33:28 1 Q. Okay. After receiving this offer letter back 09:33:35 2 in 2008, did you bother looking up the policies that 09:33:43 3 applied to research assistant professors? 09:33:48 4 A. I expected to receive annual reviews and I 09:33:51 5 did not receive any annual reviews until 2011. 09:33:55 6 Q. Okay. After receiving that annual review in 09:33:59 7 2011 though, did you look up the research track policies 09:34:07 8 so that you could see what your status at the university 09:34:11 9 was? 09:34:11 10 A. I asked if I could appeal the review in 2011 09:34:17 11 and was denied any opportunity to appeal it. 09:34:20 12 Q. That wasn't my question, ma'am. Did you ever 09:34:25 13 look at the policy cited in the letter or look up on the 09:34:32 14 website of the university -- 09:34:34 15 A. No. 09:34:34 16 Q. Okay. Thanks. 09:34:36 17 MR. ROBINSON: You might want to just finish 09:34:40 18 the question, so it's clear on the record what she's 09:34:42 19 asking, just to be clear for the record if you could, so 09:34:44 20 maybe let Yvette finish her question and then -- 09:34:44 21 THE WITNESS: Okay. 09:34:48 22 MR. ROBINSON: -- answer, could you? 09:34:49 23 BY MS. DONOSSO: 09:34:49 24 Q. Yeah, and my question was: Or did you ever 09:34:50 25 look up on the website, the university's website, the</p>
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<p>09:34:54 1 policies that are applicable for research track assistant 09:35:00 2 professors? 09:35:00 3 A. No. Can I rephrase that? I did look it up 09:35:07 4 but I was confused by it in that I didn't feel like the 09:35:11 5 department had been following policy with regard to 09:35:16 6 annual reviews. 09:35:46 7 Q. Okay. Going back to the complaint in Page 4 09:36:02 8 beginning with Paragraph 9(a). 09:36:06 9 A. What page? 09:36:07 10 Q. Page 4, going back to this allegation of 09:36:14 11 long-standing discrimination, I want to break it down 09:36:22 12 more specifically, because in that paragraph you alleged 09:36:26 13 that you believed there was long-standing discrimination 09:36:30 14 regarding your age, perceived disability and religion. 09:36:38 15 In Subparagraph A you alleged that Dr. McMahon regarded 09:36:42 16 you as having one or more mental disorders or emotional 09:36:47 17 illnesses. Can you -- can you tell me what the basis of 09:36:54 18 your allegations or statements regarding that paragraph 09:36:58 19 are? 09:36:59 20 A. McMahon told me he thought I had PTSD. 09:37:05 21 Q. When did he tell you that? 09:37:06 22 A. Early on. I would say in the first two years 09:37:13 23 that I worked there. 09:37:15 24 Q. That's kind of a big timeframe, so between 09:37:22 25 2005 and 2007, can you be a little bit more specific?</p>	<p>09:37:27 1 A. Not at this point. 09:37:28 2 Q. Okay. Was there anybody present when he made 09:37:31 3 those allegations? 09:37:32 4 A. Not that I recall. 09:37:33 5 Q. So all he said was I think you have PTSD or 09:37:41 6 can you be more specific about what he said to you? 09:37:43 7 A. He was talking about the health department 09:37:45 8 and a physician that worked there. 09:37:48 9 Q. That you worked there? 09:37:49 10 A. That worked at the health department that he 09:37:52 11 did not like. 09:37:54 12 Q. Who worked -- who worked at the health 09:37:57 13 department? 09:37:57 14 A. Pardon? 09:37:59 15 Q. That you had worked at the health department? 09:38:03 16 I'm sorry, I don't understand. 09:38:04 17 A. McMahon indicated he thought I had PTSD from 09:38:14 18 working with the health department. 09:38:15 19 Q. Okay, so from your previous employment at the 09:38:19 20 health department? 09:38:19 21 A. And specific to an individual he worked with 09:38:21 22 as a physician. 09:38:23 23 Q. Okay. Did he say anything else regarding 09:38:29 24 that? 09:38:30 25 A. Just derogatory comments about this</p>

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<p>09:38:35 1 physician.</p> <p>09:38:36 2 Q. So he was making derogatory comments about</p> <p>09:38:40 3 somebody else?</p> <p>09:38:41 4 A. Yes, and saying I had PTSD as a result of</p> <p>09:38:46 5 working with that physician.</p> <p>09:38:47 6 Q. Okay. Did he make those kind of comments</p> <p>09:38:58 7 throughout your entire tenure at the Department of</p> <p>09:39:04 8 Psychiatry?</p> <p>09:39:04 9 A. He made comments routinely about individuals</p> <p>09:39:10 10 he didn't like.</p> <p>09:39:12 11 Q. Did those -- and, again, was anybody else</p> <p>09:39:21 12 present when he made those comments?</p> <p>09:39:23 13 A. About you mean this one incidence with the --</p> <p>09:39:28 14 about the person at the health department?</p> <p>09:39:30 15 Q. Any of those incidences regarding allegations</p> <p>09:39:34 16 involving PTSD.</p> <p>09:39:36 17 A. No, he did those in private.</p> <p>09:39:40 18 Q. Okay, and how often would they occur?</p> <p>09:39:43 19 A. Which? The PTSD?</p> <p>09:39:50 20 Q. Yes.</p> <p>09:39:51 21 A. The mental illness?</p> <p>09:39:51 22 MR. ROBINSON: May I just clarify something?</p> <p>09:39:51 23 THE WITNESS: Yes.</p> <p>09:39:52 24 MR. ROBINSON: I'm really confused.</p> <p>09:39:54 25 THE WITNESS: Me too.</p>	<p>09:39:55 1 MR. ROBINSON: If I understood correctly, you</p> <p>09:39:58 2 only had one conversation with Dr. McMahon where he said</p> <p>09:40:01 3 something about you having PTSD. There were other</p> <p>09:40:05 4 conversations that you had where he made comments about</p> <p>09:40:08 5 other people; is that correct?</p> <p>09:40:10 6 THE WITNESS: Correct.</p> <p>09:40:11 7 MR. ROBINSON: Okay, so the only conversation</p> <p>09:40:13 8 you had with Dr. McMahon about you having PTSD was</p> <p>09:40:17 9 sometime in the 2005-2007 timeframe; is that correct?</p> <p>09:40:28 10 THE WITNESS: No, there were -- there was a</p> <p>09:40:31 11 couple other times he alluded to the fact.</p> <p>09:40:37 12 MR. ROBINSON: Alluded to it or said it?</p> <p>09:40:39 13 THE WITNESS: Just alluded.</p> <p>09:40:42 14 MR. ROBINSON: So we may want to explore</p> <p>09:40:45 15 that, but go ahead, Yvette, and I just needed to clarify</p> <p>09:40:49 16 that for me.</p> <p>09:40:49 17 BY MS. DONOSSO:</p> <p>09:40:50 18 Q. And regarding that statement regarding you</p> <p>09:40:56 19 and PTSD, did you ever tell anybody about this incidence?</p> <p>09:41:10 20 A. I told -- I told Tom Parks that -- that as a</p> <p>09:41:29 21 faculty member, the chairman was making mental health</p> <p>09:41:34 22 diagnoses about people he did not like.</p> <p>09:41:36 23 Q. Did he actually -- did you actually feel like</p> <p>09:41:41 24 he had diagnosed you? Because what was the actual</p> <p>09:41:44 25 statement that he made to you?</p>
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<p>09:41:46 1 A. You have PTSD.</p> <p>09:41:51 2 Q. Okay. How many times did he say that to you?</p> <p>09:41:57 3 A. He talked constantly about my former boss at</p> <p>09:42:01 4 the health department and how much he didn't like her and</p> <p>09:42:05 5 how difficult she was to work with.</p> <p>09:42:08 6 Q. Okay, so this was in reference to your former</p> <p>09:42:11 7 boss, this wasn't necessarily a derogatory comment about</p> <p>09:42:19 8 you?</p> <p>09:42:19 9 A. In that he did not let it go. He constantly</p> <p>09:42:25 10 talked about her. I mean, frequently talked about her.</p> <p>09:42:32 11 Q. Okay. Did this adversely affect your</p> <p>09:42:40 12 employment in any way?</p> <p>09:42:42 13 A. Yes, because I still had to try and work</p> <p>09:42:49 14 cooperatively with the health department.</p> <p>09:42:52 15 Q. Okay. Did you -- did he ever make any</p> <p>09:43:08 16 derogatory comments about you because of his perception</p> <p>09:43:14 17 of you having PTSD?</p> <p>09:43:25 18 A. He alluded to the fact that it would be very</p> <p>09:43:30 19 stressful to continue working with the health department.</p> <p>09:43:34 20 Q. Other than alluding to the fact that it would</p> <p>09:43:38 21 be stressful to work with the health department --</p> <p>09:43:42 22 A. I don't recall anything else at this point.</p> <p>09:43:44 23 Q. Okay. Did he ever call you derogatory names?</p> <p>09:43:55 24 MR. ROBINSON: With respect to the</p> <p>09:43:56 25 disability.</p>	<p>09:43:57 1 BY MS. DONOSSO:</p> <p>09:43:58 2 Q. With respect to the disability?</p> <p>09:44:00 3 A. He -- I was hurt in an accident and he</p> <p>09:44:07 4 laughed when he saw that I was hurt.</p> <p>09:44:10 5 Q. What kind of accident was this?</p> <p>09:44:12 6 A. It was a boating accident.</p> <p>09:44:17 7 Q. And how were you hurt in this boating</p> <p>09:44:22 8 accident?</p> <p>09:44:22 9 A. I wrenched my knee and I couldn't walk very</p> <p>09:44:27 10 well.</p> <p>09:44:27 11 Q. How would -- how did you -- why would he</p> <p>09:44:31 12 laugh because you got hurt? I don't understand why you</p> <p>09:44:35 13 thought he laughed because you got hurt. I mean, was he</p> <p>09:44:38 14 there during the accident?</p> <p>09:44:38 15 A. When he saw me.</p> <p>09:44:39 16 Q. When he saw you?</p> <p>09:44:42 17 A. Afterwards, when I came to work on crutches.</p> <p>09:44:46 18 Q. You think he laughed at you because you were</p> <p>09:44:50 19 on crutches?</p> <p>09:44:51 20 A. Yes.</p> <p>09:44:52 21 Q. And you think that that's related to the</p> <p>09:44:54 22 comment regarding PTSD?</p> <p>09:44:58 23 A. I think it's related to how he views people</p> <p>09:45:02 24 with disabilities.</p> <p>09:45:04 25 Q. Is that your perception?</p>

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<p>09:45:07 1 A. That is my perception.</p> <p>09:45:10 2 Q. Okay. Other than -- other than your</p> <p>09:45:13 3 perception of him laughing when he saw you on crutches,</p> <p>09:45:17 4 is there anything else regarding Paragraph 9(a) where you</p> <p>09:45:26 5 thought he made any kind of comment that you considered</p> <p>09:45:33 6 inappropriate regarding his views on this alleged mental</p> <p>09:45:41 7 disorder?</p> <p>09:45:42 8 A. I did, you know, not in terms of mental</p> <p>09:45:46 9 disorder, but I did have a surgery and asked if they</p> <p>09:45:51 10 could give an accommodation and if I could listen into a</p> <p>09:45:55 11 meeting, an annual departmental meeting by the phone, and</p> <p>09:46:00 12 he said no.</p> <p>09:46:02 13 Q. When did that occur?</p> <p>09:46:04 14 A. That occurred -- good question. Around 2012.</p> <p>09:46:16 15 Q. Okay, but that has nothing to do with PTSD or</p> <p>09:46:22 16 a mental disorder?</p> <p>09:46:26 17 A. Not necessarily, no.</p> <p>09:46:28 18 Q. Okay.</p> <p>09:46:29 19 MR. ROBINSON: That's a not necessarily yes.</p> <p>09:46:32 20 THE WITNESS: Not necessarily yes either.</p> <p>09:46:34 21 MR. ROBINSON: I think the way the question</p> <p>09:46:35 22 is phrased, that was really the response you wanted to</p> <p>09:46:38 23 make; right? Yes, it doesn't have anything to do with</p> <p>09:46:40 24 PTSD necessarily.</p> <p>09:46:42 25 THE WITNESS: I think that any time someone</p>	<p>09:46:45 1 goes through a serious surgery, injury, that they may</p> <p>09:46:56 2 have --</p> <p>09:46:59 3 MR. ROBINSON: I apologize from interrupting.</p> <p>09:47:01 4 I understand what you're trying to tell me, but the</p> <p>09:47:04 5 question was: That didn't have anything to do with PTSD,</p> <p>09:47:08 6 and you said, no, and I believe what you really meant to</p> <p>09:47:12 7 say was yes. Because sometimes we ask questions in a</p> <p>09:47:15 8 double negative way.</p> <p>09:47:17 9 THE WITNESS: I know.</p> <p>09:47:18 10 MR. ROBINSON: And the answer is really yes</p> <p>09:47:19 11 rather than no. Were you agreeing with the statement,</p> <p>09:47:24 12 with the question or were you disagreeing with the</p> <p>09:47:26 13 question?</p> <p>09:47:27 14 THE WITNESS: It could be related to PTSD. I</p> <p>09:47:35 15 have gone through a traumatic event and he did not</p> <p>09:47:39 16 accommodate for that.</p> <p>09:47:44 17 MR. ROBINSON: But the surgery and the</p> <p>09:47:49 18 accommodations doesn't relate to PTSD; is that correct?</p> <p>09:47:53 19 THE WITNESS: No.</p> <p>09:47:54 20 MR. ROBINSON: That is not correct.</p> <p>09:47:57 21 THE WITNESS: I'm confused. I'm confused.</p> <p>09:48:00 22 I'm saying that -- that the surgery was traumatic.</p> <p>09:48:06 23 MR. ROBINSON: I get that. I understand</p> <p>09:48:09 24 you're saying the surgery was traumatic, but surgery for</p> <p>09:48:12 25 something, for a physical issue, doesn't relate to the</p>
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<p>09:48:17 1 comment that you say Dr. McMahon made back in the</p> <p>09:48:22 2 2005-2007 era regarding PTSD; right?</p> <p>09:48:27 3 THE WITNESS: Does it link to him saying I</p> <p>09:48:29 4 had PTSD because of working with the health department?</p> <p>09:48:33 5 No.</p> <p>09:48:33 6 MR. ROBINSON: Thank you.</p> <p>09:48:33 7 BY MS. DONOSSO:</p> <p>09:48:50 8 Q. Now, on Paragraph 9(c), you also allege that</p> <p>09:48:56 9 you were offered part-time employment while younger,</p> <p>09:48:59 10 similarly situated employees were offered full-time</p> <p>09:49:03 11 employment. Did you ever work part time at the</p> <p>09:49:07 12 university?</p> <p>09:49:10 13 A. Well, if you look at this offer letter, it</p> <p>09:49:12 14 was part time.</p> <p>09:49:13 15 Q. And was that at your request?</p> <p>09:49:19 16 A. No.</p> <p>09:49:20 17 Q. Okay. Let's look at what has been previously</p> <p>09:49:32 18 marked as Exhibit 35. Now, in this letter -- I know</p> <p>09:50:23 19 you've probably have never seen this E-mail before</p> <p>09:50:26 20 because it was between Dr. McMahon and Lynn and Dan</p> <p>09:50:31 21 Hogge, although you were cc'd on it. You were cc'd on it</p> <p>09:50:36 22 and so Lynn Gardner and Barbara Young, so I'm assuming</p> <p>09:50:41 23 you were cc'd on it. It was dated April 8th, 2008, which</p> <p>09:50:46 24 was just a few months before this offer letter was</p> <p>09:50:51 25 drafted. Have you had a chance to look at the April 8th?</p>	<p>09:50:56 1 A. I've seen it before.</p> <p>09:50:57 2 Q. Now, here it says: "Judy Zimmerman would</p> <p>09:51:02 3 like to work 32 hours per week and then 40 hours a month</p> <p>09:51:07 4 away and then she would like to take away from the URADD</p> <p>09:51:10 5 in June and then only work for zero to four hours per</p> <p>09:51:15 6 week and then she'd like to return in September about</p> <p>09:51:18 7 24 hours per week or more thereafter." Did you ever have</p> <p>09:51:21 8 a conversation with Dr. McMahon where you might only want</p> <p>09:51:24 9 to work a reduced schedule?</p> <p>09:51:27 10 A. No.</p> <p>09:51:27 11 Q. So then why would he write this E-mail?</p> <p>09:51:30 12 A. This E-mail was to adjust the hours that I</p> <p>09:51:40 13 worked, so I had another job offer during that summer and</p> <p>09:51:50 14 I wanted to -- so I wanted to do a nine -- get my hours</p> <p>09:51:56 15 in the nine months instead of the 12 months, so it was</p> <p>09:52:00 16 just to adjust the schedule.</p> <p>09:52:05 17 Q. Okay. Can you turn the page?</p> <p>09:52:08 18 A. Uh-huh.</p> <p>09:52:08 19 Q. There is an E-mail in the back where it says</p> <p>09:52:20 20 that you were trying to pursue a training opportunity not</p> <p>09:52:24 21 related to autism and, in fact, that's why he says:</p> <p>09:52:30 22 "From April and May, we can pay the extra hours from my</p> <p>09:52:34 23 startup fund. Beginning in July, the money from the</p> <p>09:52:40 24 Department of Health should begin and I will support an</p> <p>09:52:43 25 average 24 hours per week of Judy's time." So he was</p>

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09:52:46 1 actually using startup funds to help you to do this
09:52:50 2 training.
09:52:50 3 A. No. No. I was being paid from the contract
09:52:55 4 I brought with me from the health department for this
09:52:58 5 time and I had another job offer for the summer that I
09:53:02 6 was being paid separately, so my understanding was all my
09:53:07 7 time was being paid for from the contract from the health
09:53:10 8 department.
09:53:11 9 Q. Judy, but that's not what this E-mail says
09:53:13 10 and that's being cc'd to Dan Hogge, so according to this
09:53:18 11 E-mail, actually Dr. McMahon was using his own startup
09:53:23 12 funds, his own -- you know, his own department money to
09:53:27 13 help pay you to get this training, so he was supporting
09:53:29 14 you so that you could get this training, and he also then
09:53:35 15 was talking to Lynn Gardner and he says: "We have to
09:53:39 16 resume the process for appointment for Judy as a research
09:53:43 17 assistant professor. I will cc Lynn and Barbara to help
09:53:47 18 us on this." So he was the one who resumed the process
09:53:53 19 for appointment, so it doesn't say reappointment or
09:53:56 20 anything new. He's the one that had you appointed to be
09:54:00 21 a research, so this is a brand-new thing. You were just
09:54:04 22 an adjunct professor and he's the one that had you
09:54:09 23 appointed as a research professor.
09:54:11 24 A. I thought I was an assistant research
09:54:14 25 professor. All this memo -- all these memos had to do --

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09:54:16 1 and I was working only part time. Because I was only
09:54:22 2 working part time, I needed to supplement my money, my
09:54:27 3 job, with other funding, and I took a three-month job
09:54:31 4 that was paid at a hospital. All I asked for is that the
09:54:37 5 part time be accounted for. I would work more hours
09:54:42 6 before it started and more hours after to make up the
09:54:48 7 time I missed during the summer.
09:54:57 8 Q. Okay. I'd like to draw your attention to the
09:55:01 9 E-mail from Lynn above. Do you see where it says: "I
09:55:10 10 will send Dr. Zimmerman an E-mail outlining the process
09:55:15 11 again with her needing new letters of recommendation,
09:55:19 12 etc. The file needs to be completed to meet the
09:55:23 13 June 24th deadline."
09:55:26 14 From the testimony that Dr. McMahon has
09:55:30 15 provided, and you sat through his deposition, the process
09:55:36 16 is a little bit more complex for research professors than
09:55:41 17 it is for just regular adjunct professors, and, so -- so,
09:55:47 18 you did need to have you new letters and that's when
09:55:51 19 Deborah Bilder came in and maybe it was you who asked her
09:55:56 20 and others to help you complete the file, so whatever had
09:56:01 21 happened is -- did something maybe happen and maybe you
09:56:03 22 had not completed the file before and that's why the file
09:56:08 23 wasn't completed until McMahon became chair?
09:56:15 24 A. There were letters provided in 2005. I
09:56:20 25 believed all the letters were provided. Then I was asked

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09:56:24 1 to do it all over again in 2000 and whatever.
09:56:29 2 Q. Okay.
09:56:31 3 MR. ROBINSON: 2008? 2007?
09:56:42 4 THE WITNESS: At this date.
09:56:45 5 MR. ROBINSON: This date being what?
09:56:47 6 THE WITNESS: Looks like 2008 from the
09:56:56 7 E-mail. So in 2005 I got letters from three outside
09:57:01 8 people and three inside people.
09:57:10 9 MR. ROBINSON: Can I just look at the exhibit
09:57:12 10 binder for a second?
09:57:14 11 THE WITNESS: Sure.
09:57:14 12 BY MS. DONOSSO:
09:57:34 13 Q. I'd like to draw -- let me draw your
09:58:58 14 attention to Exhibit 30. That's an agenda for the
09:59:29 15 Department of Psychiatry faculty meeting, that's when
09:59:32 16 Dr. Grosser had I believe left and there was a transition
09:59:37 17 happening and there was a vote. They were trying to
09:59:40 18 prepare to vote for you on January 10th, 2006, and you
09:59:48 19 had provided outside letters from Steve Kelley and
09:59:52 20 Claudia Kennedy but they still had not received inside
09:59:56 21 letters and so there's a note at the bottom that says
10:00:00 22 still need. Do you see that?
10:00:02 23 A. Correct.
10:00:03 24 Q. Okay, so your assistant research -- you
10:00:14 25 remained as an assistant, your vote to become an

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10:00:18 1 assistant research professor was never passed because
10:00:23 2 your inside letters were never received. They only
10:00:25 3 received a letter from Hilary Coon at the time. Do you
10:00:29 4 see those notes at the bottom, it says 02/27/06 still
10:00:33 5 need?
10:00:34 6 A. So can I clarify this? Bernie Grosser I
10:00:42 7 think was there until 2008.
10:00:45 8 Q. That is correct.
10:00:46 9 A. He wasn't just leaving.
10:00:47 10 Q. Okay, so I misspoke. This was an agenda from
10:00:52 11 January 10th, 2006. One of the things on the agenda was
10:00:57 12 to vote to make you an assistant research professor.
10:00:59 13 They had listed the outside and the inside letters, and
10:01:02 14 according to this agenda, you had provided the outside
10:01:08 15 letters, but the inside letters, according to this agenda
10:01:14 16 in paren, it says not yet received and there's a notation
10:01:17 17 in writing that says still need, so does this refresh
10:01:21 18 your recollection that you never provided all of the
10:01:23 19 materials to them that were needed for them to make a
10:01:26 20 complete vote for them to be able to complete your packet
10:01:33 21 for assistant research professor?
10:01:36 22 A. I didn't know they hadn't received the
10:01:39 23 letters.
10:01:40 24 Q. Okay, so they were never able to make you an
10:01:51 25 assistant research professor in 2006, and that -- okay,

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10:02:02	1	so would you agree that according to this document that	10:03:07	1	follow-up to make sure that they had received everything
10:02:05	2	is correct?	10:03:10	2	that was necessary in that packet to process that
10:02:05	3	A. No.	10:03:13	3	application?
10:02:06	4	Q. You don't believe that this document shows	10:03:13	4	A. I believed it was their responsibility
10:02:12	5	that they never received the documentation that was	10:03:16	5	because -- because some of the letters, I wouldn't be
10:02:14	6	needed for them to process your request to be a research	10:03:20	6	able to see.
10:02:19	7	professor?	10:03:21	7	Q. But these would be -- who was the person who
10:02:20	8	A. On this date, perhaps. I don't know. I've	10:03:25	8	was in charge of asking for people to write and send
10:02:26	9	never seen this before.	10:03:28	9	letters?
10:02:27	10	Q. Okay.	10:03:29	10	A. Bernie Grosser asked Bill McMahon to write a
10:02:27	11	A. And I never got any feedback that they hadn't	10:03:34	11	letter.
10:02:30	12	received the letters that they needed.	10:03:34	12	Q. Who asked Hillary Coon to write the letter?
10:02:33	13	Q. Who was the person who was applying to be an	10:03:38	13	A. I did.
10:02:39	14	assistant research professor?	10:03:38	14	Q. So who would have had to ask Bill McMahon to
10:02:41	15	A. My understanding was that the secretary	10:03:42	15	write the letter?
10:02:43	16	requested the letters and was supposed to keep me	10:03:42	16	A. I did and Grosser asked him to write the
10:02:46	17	informed if they were missing anything.	10:03:45	17	letter as well.
10:02:48	18	Q. Who was applying to be an assistant research	10:03:47	18	Q. So who would've had to do the follow-up?
10:02:52	19	professor?	10:03:50	19	A. I didn't know he hadn't done it. I assumed
10:02:52	20	A. I had been told I was being appointed as that	10:03:55	20	it had all been taken care of. I had no feedback that it
10:03:00	21	and I thought all the --	10:04:00	21	hadn't been taken care of and that I hadn't had the
10:03:00	22	Q. You're not answering my question. Who was	10:04:04	22	appointment.
10:03:02	23	the person who was --	10:04:04	23	Q. Okay, and after not hearing back for several
10:03:03	24	A. I applied.	10:04:18	24	weeks, you didn't think that you should do any follow-up?
10:03:05	25	Q. Yes, and so who was in charge of the	10:04:22	25	A. I didn't know there was a problem. I've
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10:04:26	1	never seen this.	10:06:47	1	Q. Was anybody else present when these comments
10:04:29	2	Q. Okay. Let's go back to the complaint. On	10:06:50	2	were made?
10:05:15	3	Paragraph 9(d), you alleged that you were often asked	10:06:51	3	A. No.
10:05:21	4	when you were going to retire because older employees	10:06:51	4	Q. What were the nature of these comments?
10:05:25	5	could not keep up with younger employees. Who asked you	10:06:55	5	A. He -- I'm trying to remember. He made it
10:05:35	6	this?	10:07:20	6	clear that he didn't approve of me studying to be a
10:05:36	7	A. McMahon.	10:07:38	7	chaplain and that chaplains feed the delusions --
10:05:37	8	Q. When did he begin to ask you this?	10:07:46	8	something to the effect of feed the delusions of
10:05:48	9	A. I don't recall. It was -- I don't recall	10:07:56	9	religious people and that the gist of it was that
10:05:53	10	exactly when.	10:08:10	10	individuals who had certain religious beliefs were
10:05:54	11	Q. Was anybody else present when these comments	10:08:15	11	delusional.
10:05:57	12	were made?	10:08:21	12	Q. Were you pursuing this training sometime in
10:05:58	13	A. No.	10:08:23	13	the spring of 2008?
10:05:58	14	Q. Who made derogatory comments about your	10:08:25	14	A. I don't remember. And I was also working as
10:06:12	15	interest in becoming a chaplain?	10:08:43	15	a chaplain as well.
10:06:15	16	A. McMahon.	10:08:47	16	Q. Where were you working as a chaplain?
10:06:16	17	Q. How often would he make these comments?	10:08:50	17	A. I worked at St. Mark's and I worked at Jordan
10:06:25	18	A. I would say three or four times.	10:09:05	18	Valley Hospital.
10:06:28	19	Q. So these were made three or four times during	10:09:05	19	Q. Did he allow you to be able to take time away
10:06:31	20	your entire tenure?	10:09:14	20	from your duties at the university to go be able to work
10:06:33	21	A. During the timeframe I was studying to be a	10:09:19	21	at St. Mark's and Jordan Valley?
10:06:37	22	chaplain.	10:09:22	22	A. My job at the university was only part time
10:06:37	23	Q. And when were you studying to be a chaplain?	10:09:24	23	and I adjusted my schedule. It was -- it was flexible in
10:06:40	24	A. I would have to look at the exact time.	10:09:32	24	terms of my hours. I didn't ask him to adjust anything
10:06:44	25	Around 2008. I'm not exactly sure.	10:09:36	25	except for that summer.

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10:09:41	1	10:11:04	1
10:09:46	2	10:11:07	2
10:09:51	3	10:11:13	3
10:09:53	4	10:11:15	4
10:10:01	5	10:11:18	5
10:10:02	6	10:11:22	6
10:10:09	7	10:11:22	7
10:10:26	8	10:11:23	8
10:10:27	9	10:11:28	9
10:10:29	10	10:11:44	10
10:10:31	11	10:11:47	11
10:10:36	12	10:11:52	12
10:10:37	13	10:11:57	13
10:10:40	14	10:12:02	14
10:10:41	15	10:12:15	15
10:10:43	16	10:12:22	16
10:10:45	17	10:12:28	17
10:10:49	18	10:12:34	18
10:10:51	19	10:12:37	19
10:10:53	20	10:12:47	20
10:10:55	21	10:13:01	21
10:10:57	22	10:13:03	22
10:11:00	23	10:13:04	23
10:11:02	24	10:13:18	24
10:11:03	25	10:13:27	25
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10:13:29	1	10:16:36	1
10:13:33	2	10:16:44	2
10:13:49	3	10:16:50	3
10:14:02	4	10:16:54	4
10:14:10	5	10:17:02	5
10:14:20	6	10:17:09	6
10:14:26	7	10:17:13	7
10:14:36	8	10:17:17	8
10:14:41	9	10:17:24	9
10:14:51	10	10:17:26	10
10:14:56	11	10:17:32	11
10:15:17	12	10:17:36	12
10:15:21	13	10:17:45	13
10:15:29	14	10:17:52	14
10:15:33	15	10:18:00	15
10:15:45	16	10:18:04	16
10:15:54	17	10:18:11	17
10:15:59	18	10:18:22	18
10:16:02	19	10:18:27	19
10:16:07	20	10:18:30	20
10:16:13	21	10:18:36	21
10:16:18	22	10:18:45	22
10:16:23	23	10:18:55	23
10:16:29	24	10:19:01	24
10:16:33	25	10:19:06	25

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10:19:09	1	10:21:36	1
10:19:14	2	10:21:46	2
10:19:20	3	10:21:47	3
10:19:24	4	10:21:50	4
10:19:27	5	10:21:59	5
10:19:30	6	10:22:09	6
10:19:37	7	10:22:14	7
10:19:41	8	10:22:18	8
10:19:46	9	10:22:23	9
10:19:51	10	10:22:30	10
10:19:58	11	10:22:31	11
10:20:06	12	10:22:34	12
10:20:12	13	10:22:37	13
10:20:17	14	10:22:38	14
10:20:21	15	10:22:45	15
10:20:29	16	10:22:50	16
10:20:32	17	10:23:00	17
10:20:36	18	10:23:11	18
10:20:46	19	10:23:19	19
10:20:52	20	10:23:25	20
10:20:59	21	10:23:35	21
10:21:03	22	10:23:35	22
10:21:13	23	10:23:59	23
10:21:18	24	10:24:01	24
10:21:23	25	10:24:06	25
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10:24:06	1	10:26:01	1
10:24:10	2	10:26:05	2
10:24:17	3	10:26:20	3
10:24:21	4	10:26:26	4
10:24:24	5	10:26:29	5
10:24:29	6	10:26:34	6
10:24:34	7	10:26:38	7
10:24:39	8	10:26:42	8
10:24:42	9	10:26:46	9
10:24:42	10	10:26:47	10
10:24:44	11	10:26:47	11
10:24:53	12	10:26:56	12
10:24:54	13	10:27:00	13
10:24:56	14	10:27:04	14
10:25:19	15	10:27:05	15
10:25:20	16	10:27:06	16
10:25:26	17	10:27:14	17
10:25:30	18	10:27:18	18
10:25:33	19	10:27:22	19
10:25:36	20	10:27:25	20
10:25:40	21	10:27:26	21
10:25:45	22	10:27:29	22
10:25:50	23	10:27:30	23
10:25:51	24	10:27:36	24
10:25:54	25	10:27:38	25

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10:27:44	1	10:29:58	1
10:27:46	2	10:30:06	2
10:27:48	3	10:30:20	3
10:27:52	4	10:30:33	4
10:27:55	5	10:30:42	5
10:27:56	6	10:30:47	6
10:28:00	7	10:30:51	7
10:28:07	8	10:30:55	8
10:28:10	9	10:30:57	9
10:28:15	10	10:31:02	10
10:28:21	11	10:31:05	11
10:28:24	12	10:31:15	12
10:28:30	13	10:31:26	13
10:28:37	14	10:31:33	14
10:28:41	15	10:31:35	15
10:28:47	16	10:31:35	16
10:28:47	17	10:31:37	17
10:28:52	18	10:31:38	18
10:29:02	19	10:31:46	19
10:29:07	20	10:31:50	20
10:29:27	21	10:31:56	21
10:29:42	22	10:32:01	22
10:29:47	23	10:32:01	23
10:29:51	24	10:32:13	24
10:29:57	25	10:32:15	25
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10:32:17	1	10:33:51	1
10:32:32	2	10:33:54	2
10:32:38	3	10:33:54	3
10:32:41	4	10:33:57	4
10:32:44	5	10:34:01	5
10:32:49	6	10:34:07	6
10:32:52	7	10:34:09	7
10:32:55	8	10:34:12	8
10:33:00	9	10:34:15	9
10:33:02	10	10:34:18	10
10:33:05	11	10:34:20	11
10:33:05	12	10:34:22	12
10:33:06	13	10:34:24	13
10:33:10	14	10:34:28	14
10:33:13	15	10:34:30	15
10:33:19	16	10:34:32	16
10:33:24	17	10:34:36	17
10:33:29	18	10:34:37	18
10:33:34	19	10:34:41	19
10:33:38	20	10:34:47	20
10:33:39	21	10:34:49	21
10:33:40	22	10:34:49	22
10:33:42	23	10:34:52	23
10:33:45	24	10:34:59	24
10:33:47	25	10:35:06	25

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10:35:18	1	10:53:55	1
10:35:21	2	10:54:03	2
10:35:21	3	10:54:07	3
10:35:26	4	10:54:13	4
10:35:27	5	10:54:17	5
10:35:30	6	10:54:22	6
10:35:33	7	10:54:24	7
10:35:34	8	10:54:32	8
10:35:44	9	10:54:40	9
10:35:49	10	10:54:43	10
10:35:57	11	10:54:46	11
10:35:59	12	10:54:47	12
10:36:03	13	10:54:48	13
10:36:03	14	10:54:51	14
10:52:26	15	10:54:55	15
10:52:31	16	10:54:56	16
10:52:39	17	10:55:02	17
10:52:42	18	10:55:03	18
10:52:44	19	10:55:07	19
10:52:44	20	10:55:13	20
10:52:44	21	10:55:14	21
10:52:44	22	10:55:18	22
10:53:43	23	10:55:25	23
10:53:43	24	10:55:27	24
10:53:50	25	10:55:29	25
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10:55:33	1	10:57:34	1
10:55:38	2	10:57:36	2
10:55:46	3	10:57:41	3
10:56:09	4	10:57:42	4
10:56:09	5	10:57:46	5
10:56:19	6	10:57:48	6
10:56:21	7	10:57:52	7
10:56:25	8	10:57:52	8
10:56:34	9	11:01:57	9
10:56:35	10	11:02:01	10
10:56:39	11	11:02:23	11
10:56:41	12	11:02:42	12
10:56:42	13	11:02:48	13
10:56:43	14	11:02:50	14
10:56:52	15	11:02:50	15
10:56:54	16	11:02:53	16
10:57:01	17	11:03:05	17
10:57:06	18	11:03:09	18
10:57:11	19	11:03:18	19
10:57:13	20	11:03:22	20
10:57:20	21	11:03:34	21
10:57:25	22	11:03:35	22
10:57:32	23	11:03:41	23
10:57:32	24	11:03:48	24
10:57:32	25	11:03:51	25

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11:03:52	1 THE WITNESS: Yes.	11:06:01	1 A. Yes.
11:04:06	2 BY MS. DONOSSO:	11:06:01	2 Q. I'd like to draw your attention just briefly
11:04:06	3 Q. Who is Eric Fombonne?	11:06:04	3 to a couple of sentences on the first page of this
11:04:08	4 A. Eric Fombonne is a psychiatrist who has done	11:06:11	4 letter, if I may. He states: "I am writing to assure
11:04:17	5 autism research.	11:06:12	5 you of my enthusiasm for your proposal to study the
11:04:18	6 Q. Where is he from?	11:06:15	6 prevalence of autism and other developmental
11:04:22	7 A. I think originally he's from Paris, from	11:06:19	7 disabilities." And this is director of pediatrics and
11:04:28	8 France.	11:06:23	8 continuation for education for Primary Children's. He
11:04:28	9 Q. Is he pretty well known in his field?	11:06:28	9 goes on to say: "I have a strong relationship with the
11:04:31	10 A. Yes.	11:06:33	10 mental health community through the work of Dr. William
11:04:32	11 Q. Would you consider him an expert in autism?	11:06:37	11 McMahon, your collaborator in the Department of
11:04:39	12 A. Yes.	11:06:37	12 Psychiatry." And then he goes on to say: "Dr. McMahon
11:04:40	13 Q. Would you consider it a pretty big deal to be	11:06:42	13 has been a valued member of our continuing medical
11:04:43	14 working with him?	11:06:46	14 education program review for ten years and I will be
11:04:44	15 A. Yes.	11:06:49	15 delighted to work with him." Do you see that in the
11:04:46	16 Q. I now would like to give you Exhibit 75.	11:06:51	16 first paragraph?
11:05:27	17 (Whereupon Exhibit 75 was marked for identification.)	11:06:52	17 A. Uh-huh.
11:05:27	18 BY MS. DONOSSO:	11:06:53	18 MR. ROBINSON: That is a yes?
11:05:27	19 Q. Do you recognize this document?	11:06:55	19 MS. LEONARD: Make sure you say yes.
11:05:36	20 A. Yes.	11:06:56	20 THE WITNESS: Yes.
11:05:39	21 Q. It's a letter from Jack Dolcourt, a doctor of	11:06:56	21 BY MS. DONOSSO:
11:05:47	22 pediatrics; is that correct?	11:06:57	22 Q. "I have discussed several specific activities
11:05:48	23 A. Yes, it is.	11:07:01	23 with Dr. McMahon that will contribute to your research."
11:05:57	24 Q. And it's dated May 17th, 2002; is that	11:07:07	24 Do you see that in the second paragraph?
11:06:01	25 correct?	11:07:07	25 A. Uh-huh.
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11:07:08	1 MR. ROBINSON: Yes.	11:08:24	1 involved.
11:07:10	2 THE WITNESS: Yes.	11:08:24	2 BY MS. DONOSSO:
11:07:10	3 BY MS. DONOSSO:	11:08:26	3 Q. So he just sent you a letter of support for
11:07:10	4 Q. Then he goes on to say: "Since Dr. McMahon	11:08:29	4 the study?
11:07:11	5 is one of our most popular speakers for pediatric grand	11:08:30	5 A. For the application.
11:07:15	6 rounds and since the recent epidemiology studies of	11:08:31	6 Q. For the application, okay.
11:07:18	7 autism suggest that it is a much greater public health	11:08:34	7 MR. ROBINSON: Application for the grant?
11:07:23	8 concern than previously recognized, I will work to	11:08:35	8 THE WITNESS: For the grant.
11:07:26	9 include him or other autism experts in the schedule as is	11:08:37	9 MS. DONOSSO: Okay.
11:07:30	10 appropriate." Do you see that?	11:08:38	10 MR. ROBINSON: The CDC grant?
11:07:31	11 A. Yes.	11:08:40	11 THE WITNESS: Yes.
11:07:31	12 Q. Okay. Is this a true and correct copy of the	11:08:42	12 MS. DONOSSO: Okay.
11:07:37	13 letter that he sent you?	11:08:46	13 MR. ROBINSON: And just for the record, when
11:07:38	14 A. It looks like it, yes.	11:08:46	14 you corrected that he's not the director of pediatrics,
11:07:42	15 Q. What is your opinion of Dr. Dolcourt? Do you	11:08:49	15 he is the director of pediatric continuing education;
11:07:50	16 know him well?	11:08:54	16 correct?
11:07:50	17 A. Just a clarification, he's not the director	11:08:54	17 THE WITNESS: Primary Children's Hospital I
11:07:53	18 of pediatrics. Ed Clark is the director of pediatrics.	11:08:57	18 believe.
11:07:59	19 I know Jack's wife quite well but I do not know Jack.	11:08:57	19 MR. ROBINSON: Yeah, but the director of
11:08:07	20 Q. Was he supportive of the research?	11:09:00	20 pediatric continuing education?
11:08:13	21 A. They had no involvement in the research.	11:09:02	21 THE WITNESS: Yes.
11:08:16	22 Q. Okay.	11:09:54	22 (Whereupon Exhibit 76 was marked for identification.)
11:08:20	23 MR. ROBINSON: Was he supportive in the	11:09:54	23 BY MS. DONOSSO:
11:08:22	24 research though?	11:10:19	24 Q. Do you recognize this document?
11:08:23	25 THE WITNESS: I don't know. They weren't	11:10:20	25 A. Yes.

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11:10:21	1	Q. Can you tell me what it is?	11:12:08	1	Q. Okay.
11:10:23	2	A. It's an IRB that I prepared while working at	11:12:09	2	MR. ROBINSON: To participate in the CDC
11:10:28	3	the health department.	11:12:11	3	grant?
11:10:30	4	Q. Okay, and who do you list as co-principal	11:12:12	4	THE WITNESS: Yes.
11:10:40	5	investigators?	11:12:13	5	MR. ROBINSON: Oh, okay, and you prepared
11:10:40	6	A. Dr. McMahon.	11:12:16	6	this document?
11:10:41	7	Q. In fact, at the bottom you list Zimmerman and	11:12:17	7	THE WITNESS: My staff and I did, yes.
11:10:49	8	McMahon in the IRB application and even in the body on	11:12:17	8	BY MS. DONOSSO:
11:10:54	9	Page 2 of 6 you say: "Dr. McMahon also collaborated in	11:12:20	9	Q. Okay. Can you turn to Exhibit 36? And you
11:10:59	10	the Stanford Autism Sub Pair Genetic Linkage studies. He	11:14:24	10	may have not seen this document before and it's your
11:11:03	11	is also the principal investigator for a project in the	11:14:31	11	third year formal review, the appointment review. I'll
11:11:09	12	Department of Psychiatry known as the Utah Autism	11:14:35	12	give you an opportunity to read through it.
11:11:13	13	Research Program." So from the very beginning, even	11:14:37	13	A. I have read through it.
11:11:16	14	before you came over to the Department of Psychiatry, you	11:14:38	14	Q. You've read through it?
11:11:22	15	basically referred to yourself as co-principal	11:14:41	15	MR. ROBINSON: Have you seen it before?
11:11:26	16	investigator with Dr. McMahon; is that correct?	11:14:43	16	THE WITNESS: Yes, it was provided to me.
11:11:29	17	A. Yes, but he was not the principal	11:14:43	17	BY MS. DONOSSO:
11:11:34	18	investigator on any cooperative agreements with the CDC.	11:14:46	18	Q. How was it provided to you?
11:11:42	19	Q. But he was on URADD?	11:14:47	19	A. Through McMahon's office.
11:11:46	20	A. URADD was my CDC grant.	11:14:50	20	Q. Okay, and when was it provided to you?
11:11:49	21	Q. But at least on this document, you did list	11:14:51	21	A. Sometime after September 19th, 2011.
11:11:53	22	him as a co-principal investigator?	11:14:54	22	Q. Okay, so you've seen this before, and did you
11:11:55	23	A. The university required an IRB for him to	11:14:56	23	provide a response as a result of you receiving this
11:12:02	24	participate in the grant and this is the IRB that was	11:15:00	24	document?
11:12:06	25	prepared for him.	11:15:00	25	A. I don't recall.
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11:15:04	1	Q. There is actually like a response letter in	11:16:50	1	but there have been definitely some concerns that were
11:15:08	2	here.	11:16:54	2	discussed with you in the previous exhibit that we
11:15:11	3	A. I may have. I don't recall.	11:17:02	3	discussed regarding the outline of expectations. Do you
11:15:13	4	Q. Okay. We'll get to that later. So you've	11:17:05	4	agree with that?
11:15:16	5	seen this before?	11:17:07	5	A. These were not discussed with me.
11:15:16	6	A. Yes.	11:17:13	6	Q. Right. I mean, because you were not allowed
11:15:17	7	Q. Okay. Now, in here there was a discussion on	11:17:18	7	to be in this meeting, but the concerns regarding
11:15:28	8	September 19th, 2011, regarding your third year formal	11:17:22	8	collegiality, working well with others, were also brought
11:15:32	9	review obviously, and as a result of that, some of the	11:17:26	9	up in this review. Do you agree with that?
11:15:46	10	people present expressed some concerns, but, for example,	11:17:32	10	A. I believe that there like within -- what's
11:15:56	11	in Bullet No. 3, concerned primarily with respect to	11:17:35	11	the time period?
11:15:59	12	collegiality, working well with others in the department.	11:17:36	12	Q. So this was just three months, so this
11:16:05	13	Do you see that?	11:17:40	13	meeting took place three months after the June 11th
11:16:06	14	A. Yes.	11:17:44	14	meeting you had with Dr. Macintosh and --
11:16:06	15	Q. Shared access in terms of autism research,	11:17:48	15	A. Yes.
11:16:11	16	professional contact with psychiatry faculty is limited.	11:17:49	16	Q. -- Dr. McMahon. Following --
11:16:19	17	The following bullet point: "She made it quite clear to	11:17:59	17	MR. ROBINSON: I'm sorry, did you ever get an
11:16:23	18	junior faculty that she views the use of the CDC and	11:18:01	18	answer?
11:16:26	19	register data as a direct threat to her and has proceeded	11:18:02	19	THE WITNESS: I'm not sure what the question
11:16:30	20	on many occasions to record any effort of any other	11:18:03	20	is.
11:16:32	21	researcher to use the resource."	11:18:03	21	BY MS. DONOSSO:
11:16:38	22	Now, there is some -- there is some positive	11:18:04	22	Q. So my question is: Some of the same concerns
11:16:41	23	things. "She is productive in terms of writing grants	11:18:06	23	that have been raised in the June 2011 meeting by Dr.
11:16:44	24	and publishing papers. As a clinical manager, she is	11:18:09	24	McMahon and Dr. Macintosh were also raised by your
11:16:48	25	good with deadlines." There are some positive in there,	11:18:13	25	colleagues in the September 2011 meeting in your third

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<p>11:18:17 1 year reappointment review.</p> <p>11:18:20 2 A. I have no idea who raised the concerns.</p> <p>11:18:22 3 Q. You're correct. We have no idea who raised</p> <p>11:18:23 4 them, but they are listed in the document, which is a</p> <p>11:18:26 5 summary of the meeting?</p> <p>11:18:28 6 A. Yes.</p> <p>11:18:29 7 Q. Okay. Following your receipt of this or</p> <p>11:18:44 8 following learning this, learning about this RPT, were</p> <p>11:18:50 9 you concerned that your contract would not be renewed the</p> <p>11:18:54 10 following year?</p> <p>11:18:55 11 A. I was concerned I wouldn't pass RPT.</p> <p>11:19:02 12 Q. You were not concerned that your contract</p> <p>11:19:04 13 would not be renewed the following year?</p> <p>11:19:06 14 A. I saw that no matter what I did, I would have</p> <p>11:19:11 15 no opportunity to defend myself.</p> <p>11:19:14 16 Q. But that wasn't my question. My question</p> <p>11:19:18 17 was: Following this RPT process, were you at all</p> <p>11:19:21 18 concerned that your contract would not be renewed?</p> <p>11:19:23 19 A. I was concerned my contract would not be</p> <p>11:19:27 20 renewed because I reported the chairman of the department</p> <p>11:19:36 21 with plagiarism.</p> <p>11:20:07 22 (Whereupon Exhibit 77 was marked for identification.)</p> <p>11:20:07 23 BY MS. DONOSSO:</p> <p>11:20:17 24 Q. Do you recognize this document?</p> <p>11:20:19 25 A. Yes.</p>	<p>11:20:28 1 Q. I'll give you some time to read it. So I</p> <p>11:20:59 2 actually want to start reading it backwards.</p> <p>11:21:02 3 A. Okay.</p> <p>11:21:02 4 Q. There are three pages to it. So let's start</p> <p>11:21:07 5 with the third page, which has been marked 9952. So this</p> <p>11:21:18 6 is an E-mail from you to Dean Li and it states it's dated</p> <p>11:21:29 7 July 2nd, 2012, it states: "Dr. Parks gave me your name</p> <p>11:21:33 8 and suggested that you would be the appropriate person</p> <p>11:21:35 9 for me to contact for a consultation regarding a research</p> <p>11:21:39 10 matter. Would it be possible for me to schedule a one</p> <p>11:21:41 11 hour meeting at your earliest convenience?" Do you see</p> <p>11:21:47 12 that?</p> <p>11:21:47 13 A. Yes.</p> <p>11:21:48 14 Q. Would it be fair to say that you didn't meet</p> <p>11:21:50 15 with Dean Li for the first time until after this E-mail?</p> <p>11:21:58 16 A. So your question is: Did I meet with Dr. Li</p> <p>11:22:01 17 after this E-mail?</p> <p>11:22:02 18 Q. Did you meet with Dr. Li at all before this</p> <p>11:22:06 19 E-mail?</p> <p>11:22:06 20 A. I met with Dr. Parks before this E-mail.</p> <p>11:22:09 21 Q. That's not my question. Did you meet with</p> <p>11:22:13 22 Dr. Li before sending this E-mail ever?</p> <p>11:22:16 23 A. No.</p> <p>11:22:16 24 Q. Okay.</p> <p>11:22:20 25 A. But I had sent him some correspondence.</p>
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<p>11:22:25 1 Q. But according to this E-mail, Dr. Parks gave</p> <p>11:22:29 2 me your name and suggested that you would be appropriate</p> <p>11:22:32 3 for me to consult with on this matter, so this sounds</p> <p>11:22:35 4 like this is the first E-mail you ever sent Dr. Li.</p> <p>11:22:40 5 A. I believe there are some E-mails to his</p> <p>11:22:42 6 administrative assistant, Christine Lasalle.</p> <p>11:22:42 7 Q. Okay, so the E-mails were between you and</p> <p>11:22:45 8 Christine Lasalle, not between you and Dr. Li?</p> <p>11:22:47 9 A. Correct.</p> <p>11:22:47 10 Q. Okay. Next page.</p> <p>11:22:50 11 MR. ROBINSON: May I just clarify?</p> <p>11:22:53 12 THE WITNESS: Yes.</p> <p>11:22:53 13 MR. ROBINSON: The E-mails to his</p> <p>11:22:55 14 administrative support person, were those also in the</p> <p>11:22:58 15 July 2012 timeframe?</p> <p>11:23:01 16 THE WITNESS: I think they were in June but</p> <p>11:23:02 17 I'm not exactly sure.</p> <p>11:23:06 18 MR. ROBINSON: June of 2012?</p> <p>11:23:09 19 THE WITNESS: Correct.</p> <p>11:23:10 20 MR. ROBINSON: So not before June 2012?</p> <p>11:23:13 21 THE WITNESS: Dean Li, no.</p> <p>11:23:14 22 MR. ROBINSON: That is a, yes, not before</p> <p>11:23:16 23 June 2012; right?</p> <p>11:23:18 24 THE WITNESS: Right, so prior to that, I had</p> <p>11:23:20 25 been meeting with Dr. Parks over the matter.</p>	<p>11:23:23 1 MR. ROBINSON: So your first contact with</p> <p>11:23:26 2 Dean Li's office was at the earliest June 2012?</p> <p>11:23:31 3 THE WITNESS: I believe so.</p> <p>11:23:33 4 MR. ROBINSON: Thank you.</p> <p>11:23:33 5 BY MS. DONOSSO:</p> <p>11:23:40 6 Q. Now, let's review the E-mail where the PRD</p> <p>11:23:46 7 number is 9950, and at the very top, this E-mail is dated</p> <p>11:23:53 8 July 6th, 2012. Do you see that?</p> <p>11:23:57 9 A. Yes.</p> <p>11:23:57 10 Q. Do you believe that this E-mail thread is a</p> <p>11:24:01 11 true and correct copy of the E-mails that you sent to Dr.</p> <p>11:24:06 12 Li?</p> <p>11:24:06 13 A. Yes.</p> <p>11:24:06 14 Q. It's states: "I have met with Dr. Blomgren</p> <p>11:24:12 15 last year when Dr. McMahon indicated he may not renew my</p> <p>11:24:16 16 contract during my third year RPT process." How did Dr.</p> <p>11:24:23 17 McMahon indicate he would not be renewing your contract</p> <p>11:24:28 18 during the RPT process?</p> <p>11:24:29 19 A. Because he told me if I didn't do exactly</p> <p>11:24:33 20 what he'd say, he'd get me.</p> <p>11:24:36 21 Q. What was said? The RPT process or the</p> <p>11:24:39 22 outline expectations?</p> <p>11:24:40 23 A. When I brought up to him the concerns about</p> <p>11:24:42 24 the IRB and lack of IRBs, he told me I had to do exactly</p> <p>11:24:49 25 what he said or he would get me.</p>

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<p>11:24:54 1 Q. Okay. Now, the out line of expectations 11:24:55 2 doesn't mention IRBs and you weren't present during the 11:25:00 3 RPT process. 11:25:02 4 A. What is your question? 11:25:03 5 Q. So when did he say this to you? During the 11:25:07 6 meeting regarding the outline -- so let me back up. You 11:25:11 7 weren't present during your RPT process because you're 11:25:14 8 not allowed to be there; isn't that correct? 11:25:16 9 A. Yes. 11:25:17 10 Q. Okay, so you were present during -- but you 11:25:20 11 were present during the meeting during the outline of 11:25:22 12 expectations as was Dr. Macintosh; correct? 11:25:26 13 A. I received the letter of expectations after 11:25:28 14 the meeting with Dr. Macintosh. 11:25:30 15 Q. Okay, so are you alleging that during the 11:25:33 16 meeting with Dr. Macintosh, Dr. McMahon said if you don't 11:25:38 17 do exactly as I say during the IRB process, I will get 11:25:43 18 you? 11:25:44 19 A. I'm saying that he said to me when I asked 11:25:47 20 that the grant be transferred under my name, the IRB for 11:25:51 21 the grant be transferred under my name. 11:25:52 22 Q. When did that conversation take place? 11:25:54 23 A. It -- when I -- there are some E-mail strings 11:26:00 24 about that when I met with him over the IRB issues and I 11:26:05 25 believe it was April of 2011.</p>	<p>11:26:06 1 Q. Have you produced those during discovery? 11:26:10 2 MS. LEONARD: Yes. 11:26:14 3 BY MR. DONOSSO: 11:26:14 4 Q. And so that happened in April of 2011, so 11:26:17 5 that did not happen during the outline of expectations 11:26:21 6 meeting; correct? 11:26:22 7 A. I think he said something to the effect that 11:26:25 8 I needed to do exactly what he said. 11:26:28 9 Q. And that's a direct quote, you need to do 11:26:31 10 exactly as I say? 11:26:32 11 A. To the best of my knowledge. I mean, this 11:26:36 12 has been a long time and it's previously been provided. 11:26:46 13 MR. ROBINSON: I'm sorry, what has been 11:26:48 14 previously provided? 11:26:50 15 THE WITNESS: The conversation, about the 11:26:53 16 conversation. 11:26:54 17 MR. ROBINSON: Where he said I'll get you? 11:26:56 18 THE WITNESS: Uh-huh. 11:26:57 19 MR. ROBINSON: And that language is in the 11:26:59 20 E-mail? 11:27:00 21 THE WITNESS: No, I'm not sure. That 11:27:02 22 language was said to me in a private meeting. 11:27:05 23 MR. ROBINSON: All right, so the language 11:27:06 24 that you've given us that he would get you if you didn't 11:27:09 25 do exactly what he said is not within an E-mails?</p>
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<p>11:27:13 1 THE WITNESS: No. 11:27:14 2 MR. ROBINSON: All right, and the E-mails, 11:27:15 3 the purpose of the E-mails is to give us the timeframe -- 11:27:15 4 THE WITNESS: Yes. 11:27:19 5 MR. ROBINSON: -- when he allegedly made that 11:27:21 6 statement? 11:27:21 7 THE WITNESS: Yes, it was during the meeting 11:27:23 8 I had with him to talk about IRB issues and changing the 11:27:27 9 order of the PI on the IRBs. 11:27:32 10 MR. ROBINSON: All right, Ashley, are those 11:27:34 11 E-mails within that group that you just sent us the other 11:27:38 12 day? 11:27:39 13 MS. LEONARD: Yes. 11:27:41 14 MR. ROBINSON: Okay. 11:27:41 15 BY MS. DONOSSO: 11:27:41 16 Q. And do the E-mails also say do as I say or is 11:27:46 17 that also not on the E-mails? 11:27:50 18 A. The conversation was in person. The dates of 11:27:54 19 the conversation and my follow-up with Dr. Botkin are in 11:27:59 20 the E-mails. 11:28:00 21 Q. Was anybody present during that conversation? 11:28:02 22 MS. LEONARD: Objection. Asked and answered. 11:28:05 23 MR. ROBINSON: I didn't hear what she said. 11:28:07 24 THE WITNESS: The meeting was alone with him 11:28:13 25 and that's why I asked for a different mentor.</p>	<p>11:28:16 1 MR. ROBINSON: I'm sorry. 11:28:18 2 THE WITNESS: I asked for a different mentor. 11:28:21 3 MR. ROBINSON: Oh, mentor. May I ask a 11:28:53 4 clarifying question? Did you report that conversation to 11:28:56 5 anybody? 11:28:59 6 THE WITNESS: Yes. 11:29:00 7 MR. ROBINSON: Who? 11:29:04 8 THE WITNESS: Dean Li. 11:29:05 9 MR. ROBINSON: After -- 11:29:05 10 MS. LEONARD: Jeff, you have a lot of 11:29:08 11 questions, and it's Yvette's deposition. If she wants to 11:29:12 12 clarify, she can clarify. 11:29:15 13 MR. ROBINSON: Okay. I apologize. 11:29:15 14 BY MS. DONOSSO: 11:29:17 15 Q. But you didn't meet with Dean Li until after 11:29:20 16 July of 2012? 11:29:21 17 A. I also told my new mentor. 11:29:29 18 Q. Who is Dr. Macintosh? 11:29:32 19 A. Yes. 11:29:32 20 Q. And when did you tell Dr. Macintosh? 11:29:36 21 A. When we'd meet together and I don't have the 11:29:40 22 exact dates. 11:30:01 23 Q. Okay. When you met with Dean Li, however, 11:30:20 24 you were also trying to negotiate a transfer out of the 11:30:24 25 department?</p>

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<p>11:30:25 1 A. I meet first with Dr. Parks over some 11:30:31 2 plagiarism issues and I believe it was May of 2012. 11:30:41 3 Q. But you first had met with Dr. Blomgren 11:30:48 4 regarding the transfer before you met with Dean Li? 11:30:52 5 A. I had met with Dr. Parks about the transfer. 11:30:56 6 Q. Through Dr. Blomgren? 11:30:59 7 A. I believe I first met with Dr. Parks. I 11:31:02 8 think the year before I met with Dr. Parks about my 11:31:09 9 concerns and then I met again with him in May, so what I 11:31:16 10 recall is that I met first with him in 2011 about moving 11:31:23 11 my grant to a different department and then I met with 11:31:29 12 him again in May of 2012. 11:31:36 13 Q. And what was their response about 11:31:38 14 transferring departments? 11:31:39 15 A. If the grant was in my name, that shouldn't 11:31:43 16 be a problem. 11:31:45 17 Q. But there was more to that. They made you an 11:31:50 18 offer and what was the offer? 11:31:52 19 A. What offer? 11:31:54 20 Q. They had to take a vote before being able to 11:31:58 21 transfer departments. They had to vote as a department 11:32:00 22 on what type of offer they could make you as far as a 11:32:04 23 professor position and what was their response to that? 11:32:09 24 A. So who? I'm not sure who. 11:32:11 25 Q. Dr. Blomgren.</p>	<p>11:32:13 1 A. So I had approached him, Parks, in 2011 about 11:32:18 2 my concerns with Dr. McMahon and things that were 11:32:23 3 happening in the department and then I approached him 11:32:28 4 again in May 2012 and Blomgren said that the department 11:32:38 5 would need to approve my assistant research faculty 11:32:42 6 position. 11:32:46 7 Q. What did they tell you when they got back to 11:32:49 8 you? 11:32:49 9 A. That the faculty had approved my appointment. 11:32:53 10 Q. And what were the terms of that appointment? 11:32:58 11 A. I had to bring my grant with me. 11:33:09 12 Q. Is that what they said? 11:33:12 13 MR. ROBINSON: I don't want to incur the 11:33:12 14 wrath of Ashley, but the CDC grant? 11:33:14 15 BY MS. DONOSSO: 11:33:14 16 Q. Or the URADD grant? 11:33:16 17 A. The URADD grant is the CDC grant. 11:33:19 18 MR. ROBINSON: So you're talking about the 11:33:23 19 CDC grant? 11:33:23 20 THE WITNESS: I had to bring my own funding 11:33:25 21 to the department. They didn't have money to fund my 11:33:28 22 position. 11:33:29 23 MR. ROBINSON: I just want to make sure the 11:33:30 24 grant you're referring to is the CDC grant. 11:33:35 25 THE WITNESS: Yes.</p>
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<p>11:33:35 1 MR. ROBINSON: Okay. 11:33:35 2 (Whereupon Exhibit 78 was marked for identification.) 11:33:35 3 BY MS. DONOSSO: 11:37:25 4 Q. This is another long thread and I apologize 11:37:28 5 about that. Do you recognize this E-mail? 11:37:37 6 A. Yes. 11:37:37 7 Q. So it's an E-mail thread between you and Dr. 11:37:50 8 Michael Blomgren during the timeframe of July of 2012; is 11:37:56 9 that correct? 11:37:57 10 A. Yes. 11:37:57 11 Q. I'd like to draw your attention to the thread 11:38:07 12 that is marked 9942 and 9943. 11:38:16 13 A. Okay. 11:38:16 14 Q. And looks like it's dated May 25th, 2012, but 11:38:21 15 it's on Page 9943. It says: "Hi, Judy. Sorry for the 11:38:28 16 delay in getting back to you. We had a faculty vote to 11:38:31 17 offer you an assistant research faculty appointment." Do 11:38:35 18 you see that? 11:38:35 19 A. Yes. 11:38:35 20 Q. "This is a nontenure track research position 11:38:39 21 with no implied teaching responsibilities. This is also 11:38:42 22 soft money and would require you to fund yourself on your 11:38:46 23 grant projects." And then it goes on to say: "The only 11:38:50 24 departmental concern was making sure we didn't burn all 11:38:53 25 bridges with psychiatry. Since the number of individuals</p>	<p>11:38:56 1 have worked with psychiatry and hope to again in the 11:39:00 2 future, they wanted to make sure this played out in an 11:39:05 3 amicable fashion." Do you see that? 11:39:07 4 A. Yes. 11:39:08 5 Q. Okay. "I told them that was my expectation, 11:39:15 6 but, of course, I couldn't guarantee anything since we're 11:39:18 7 just starting this process. I'm fine with the letter to 11:39:22 8 Tom Parks as you wrote it. Do you want to send it or 11:39:26 9 should I?" So basically it would be a nontenure 11:39:44 10 position, the way you were in psychiatry, right, as per 11:39:49 11 your offer letter, and you'd also have to come up with 11:39:52 12 your own grant money; correct? Is that how you 11:39:58 13 understood that? 11:40:01 14 A. It says that I would need to fund myself on 11:40:05 15 grants and contracts. 11:40:07 16 Q. Right, because it's soft money. What did you 11:40:09 17 understand the part about we want to make sure we don't 11:40:14 18 burn all bridges with psychiatry? What did you 11:40:17 19 understand that to mean? 11:40:21 20 A. That both of us wanted this to happen in as 11:40:26 21 congenial of a manner as possible. 11:40:32 22 Q. What had been the discussions involving the 11:40:37 23 URADD and CDC grants? 11:40:39 24 A. I don't know what the URADD grant is, so to 11:40:45 25 me, I collected all the data, I did all the research, so</p>

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11:40:50 1 to me, they were the same thing.
11:40:53 2 Q. But you were notified in separate letters
11:40:58 3 that you were removed from this CDC grant and the URADD
11:41:02 4 directorship position, so they were separate in that
11:41:05 5 regard; correct?
11:41:08 6 A. I don't know how.
11:41:09 7 Q. But obviously to the university they were
11:41:11 8 because you received separate letters for that.
11:41:15 9 A. I received separate letters.
11:41:18 10 Q. Yes. Do you want me to show them to you?
11:41:22 11 A. No.
11:41:23 12 Q. Okay. Let me show you, for example,
11:44:22 13 beginning on Exhibit 21, this letter you were notified
11:44:31 14 that as of December 14th you were no longer the director
11:44:34 15 of the URADD program. Do you see that?
11:44:36 16 A. Yes.
11:44:37 17 Q. Then through this letter, you were notified
11:44:46 18 that you were -- you're again just explicitly notified
11:44:51 19 that because now Deborah Bilder was the director, you
11:44:54 20 didn't have the right to access the data. Do you see
11:44:58 21 that?
11:44:58 22 A. I can read the E-mails, yes, the letters.
11:45:02 23 Q. The letters, okay. Then through this letter,
11:45:13 24 you were then removed from the access to complete the CDC
11:45:19 25 grants and this was subsequently in February, and this is

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11:45:34 1 Exhibit No. 24, so obviously the university was notifying
11:45:46 2 you that you were no longer the principal investigator
11:45:49 3 for the CDC grant in a separate letter then from the
11:45:53 4 URADD one.
11:46:01 5 A. What is the question?
11:46:03 6 Q. Well, I asked you and you --
11:46:04 7 A. I can read it, yes.
11:46:05 8 Q. And you said that you didn't see the
11:46:06 9 difference, but obviously do you see that the university
11:46:09 10 saw it differently enough to send you two separate
11:46:15 11 letters for each grant?
11:46:17 12 A. My understanding was --
11:46:17 13 Q. Just answer my question yes or no.
11:46:17 14 A. I don't know what your question is.
11:46:20 15 Q. That the university saw a difference between
11:46:23 16 URADD and CDC enough to send you two separate letters to
11:46:27 17 remove you from each program?
11:46:29 18 A. I was confused by this letter.
11:46:31 19 Q. That's not my question. Did they send you
11:46:33 20 two separate letters to remove you from each of the
11:46:36 21 programs?
11:46:36 22 A. I see they that they sent me two different
11:46:39 23 letters.
11:46:39 24 Q. Is that a yes?
11:46:41 25 A. Yes, I see that there are two different

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11:46:43 1 letters.
11:46:43 2 Q. Okay, so going back to my question: What did
11:47:00 3 Michael Blomgren -- what kind of discussions were you
11:47:05 4 having with him that he was concerned about burning
11:47:08 5 bridges with psychiatry if they brought you over to their
11:47:10 6 department?
11:47:11 7 A. It would be very difficult for -- the grant
11:47:18 8 was a lot of money and we both wanted to be congenial.
11:47:31 9 Q. Was there a discussion about maybe you
11:47:34 10 bringing over URADD -- I mean, you bringing CDC and
11:47:38 11 leaving URADD with the Department of Psychiatry?
11:47:41 12 A. I'm not sure what their definition of URADD
11:47:44 13 was. If it's the monies from the health department
11:47:46 14 contract, then there was some discussion of that.
11:47:57 15 Q. So is the answer, yes, there was a discussion
11:48:00 16 about splitting the programs, you taking CDC and leaving
11:48:05 17 URADD with Bill?
11:48:06 18 A. Discussions with who?
11:48:08 19 Q. With Blomgren.
11:48:14 20 A. I'm not sure we talked about that. We may be
11:48:18 21 did. I'm not sure.
11:48:19 22 Q. Going back to Exhibit 21, that is the letter
11:48:51 23 that you received on December 13th, 2012. Do you recall
11:49:01 24 receiving that letter?
11:49:02 25 A. Not on that date but I recall receiving the

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11:49:05 1 letter.
11:49:05 2 Q. Is that the letter where you were informed
11:49:08 3 you were no longer the director of URADD?
11:49:11 4 A. That's what it says.
11:49:12 5 Q. Is that a true and correct copy of the letter
11:49:15 6 you received?
11:49:15 7 A. Yes.
11:49:16 8 Q. I'd like to show what has been previously
11:49:25 9 marked as Exhibit 22. It's a letter dated January 3rd,
11:49:32 10 2013. Do you recognize that document? It is signed by
11:49:35 11 Dr. McMahon and Dr. Bilder.
11:49:39 12 A. Yes.
11:49:40 13 Q. That is the letter that clarifies you no
11:49:45 14 longer have authority to collect data under the URADD
11:49:50 15 program. Do you recall receiving that letter?
11:49:52 16 A. Yes.
11:49:52 17 Q. And is Exhibit 24 a true and correct copy of
11:49:56 18 the letter that you received?
11:49:57 19 A. Yes.
11:49:58 20 Q. You earlier testified that you began having
11:50:34 21 conversations with Dr. Parks in July of 2012; is that
11:50:39 22 correct?
11:50:39 23 A. 2011.
11:50:40 24 Q. 2011. Dr. Li, I'm sorry, you began having
11:50:46 25 conversations with Dr. Li in July of 2012; is that

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<p>11:50:51 1 correct?</p> <p>11:50:51 2 A. I started in June to his administrative</p> <p>11:50:55 3 assistant.</p> <p>11:50:55 4 Q. Yes. Some of your discussions with Dr. Li</p> <p>11:51:09 5 involved your concerns that Dr. Bakian and Dr. McMahon</p> <p>11:51:15 6 and Dr. Bilder were applying -- were updating or amending</p> <p>11:51:23 7 an IRB; is that correct?</p> <p>11:51:25 8 A. I sent him an E-mail outlining my concerns</p> <p>11:51:33 9 about modifications to an IRB.</p> <p>11:51:36 10 Q. Okay. Let me show what we'll now mark as</p> <p>11:51:43 11 Exhibit 79.</p> <p>11:51:44 12 (Whereupon Exhibit 79 was marked for identification.)</p> <p>11:51:44 13 BY MS. DONOSO:</p> <p>11:53:07 14 Q. Do you recognize this E-mail?</p> <p>11:53:09 15 A. Yes.</p> <p>11:53:10 16 Q. Okay, and there is a second page behind it,</p> <p>11:53:14 17 by the way, it's kind of a complete thread. Are these</p> <p>11:53:21 18 some -- do these E-mails, are these some of the concerns</p> <p>11:53:28 19 you shared with Dr. Li as well as with his administrative</p> <p>11:53:34 20 assistant, Christine Lasalle, regarding Dr. McMahon's</p> <p>11:53:41 21 amendments to the original IRB?</p> <p>11:53:43 22 A. I first shared these concerns with Dr. Parks</p> <p>11:53:47 23 in 2011 and Dr. Botkin and with the IRB and then I met</p> <p>11:53:55 24 with McMahon about separating out our research</p> <p>11:53:59 25 activities, which we did in separate IRBs.</p>	<p>11:54:03 1 Q. Right, and this is where you begin alleging,</p> <p>11:54:06 2 and I'll just read from the E-mail, since it speaks for</p> <p>11:54:09 3 itself, that Dr. McMahon has taken portions of -- you say</p> <p>11:54:13 4 my IRB and moved them under his IRB and then you asked</p> <p>11:54:19 5 Dr. Li could you, please, include this as part of the</p> <p>11:54:25 6 issues you're looking into as I'm very concerned about my</p> <p>11:54:27 7 liability; is that correct?</p> <p>11:54:28 8 A. So what's your question?</p> <p>11:54:29 9 Q. So I'm just saying, so is this a true and</p> <p>11:54:32 10 correct copy of the E-mail that you sent to Dr. Li?</p> <p>11:54:34 11 A. Yes.</p> <p>11:54:34 12 Q. Okay. Now, in October of 2012, I'm in the</p> <p>11:54:46 13 next page, Dr. Li asked you: "I would like to resume the</p> <p>11:54:58 14 conversation about a possible transfer for Judy to the</p> <p>11:55:01 15 College of Health." Do you see that?</p> <p>11:55:02 16 A. Yes.</p> <p>11:55:03 17 Q. But he said or -- yeah, that the E-mail says:</p> <p>11:55:09 18 "The database will continue to be housed inside</p> <p>11:55:13 19 psychiatry but will be accessible to all researchers with</p> <p>11:55:19 20 the appropriate permissions. Are each of you committed</p> <p>11:55:23 21 to the shared access? I appreciate a simple yes or no.</p> <p>11:55:28 22 If both of you can commitment to this approach, then I</p> <p>11:55:31 23 will arrange to get legal advice or other assistance</p> <p>11:55:36 24 necessary to pursue this plan." Do you see that question</p> <p>11:55:39 25 there?</p>
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<p>11:55:39 1 A. I see it.</p> <p>11:55:40 2 Q. Okay. What was your response to that</p> <p>11:55:46 3 proposal?</p> <p>11:55:47 4 A. We drafted a response to Dean Li about</p> <p>11:55:54 5 privacy concerns and asked that they continue to look</p> <p>11:56:05 6 into the privacy issues.</p> <p>11:56:07 7 Q. By the database, were they referring to</p> <p>11:56:11 8 URADD?</p> <p>11:56:12 9 A. I don't know.</p> <p>11:56:12 10 Q. So how were you able to respond to privacy</p> <p>11:56:17 11 concerns?</p> <p>11:56:18 12 A. So I had a contract with the Utah State</p> <p>11:56:22 13 Office of Education that did not allow me to share URADD</p> <p>11:56:27 14 data, so I don't believe I had the authority to agree to</p> <p>11:56:32 15 share any data I collected, that they would have to go</p> <p>11:56:34 16 back to the sources to ask for permission to share the</p> <p>11:56:39 17 data.</p> <p>11:56:39 18 Q. But Bill and Debbie were on -- I mean, if</p> <p>11:56:43 19 they were on those IRBs, they would all be able to use</p> <p>11:56:47 20 that data.</p> <p>11:56:48 21 A. What IRB?</p> <p>11:56:50 22 Q. Okay. You said that you had a contract with</p> <p>11:56:53 23 whom?</p> <p>11:56:54 24 A. The Utah State Office of Education.</p> <p>11:56:57 25 Q. And you would be the only person who would be</p>	<p>11:57:01 1 able to use this data?</p> <p>11:57:02 2 A. Yes, that we could not share identifiable</p> <p>11:57:08 3 data.</p> <p>11:57:08 4 Q. But this was all de-identifiable information.</p> <p>11:57:11 5 A. The IRB was the sharing of identifiable data.</p> <p>11:57:15 6 Q. By the time the epidemiologist used this</p> <p>11:57:21 7 information, there were no identifiable data.</p> <p>11:57:24 8 A. No, the IRB added -- Bill added to his IRB</p> <p>11:57:29 9 that he wanted identifiable data that included -- from</p> <p>11:57:33 10 the CDC grant that included school and health data that</p> <p>11:57:37 11 was identifiable. That was the concern.</p> <p>11:57:44 12 Q. Okay, so in some of his grant proposals -- so</p> <p>11:57:53 13 was this a blanket statement that nobody could use this</p> <p>11:57:58 14 data, only you could use this data?</p> <p>11:58:01 15 A. I was -- I had a contract and I was under</p> <p>11:58:04 16 contractual arrangement with the State Office of</p> <p>11:58:07 17 Education, as well as the CDC. If a researcher wanted to</p> <p>11:58:12 18 use identifiable data, they would have to go back to the</p> <p>11:58:15 19 data sources for permission to use identifiable data.</p> <p>11:58:18 20 Q. And when did this contract come into play</p> <p>11:58:21 21 with the Utah State Office of Education?</p> <p>11:58:24 22 A. So in 2000 -- oh, in 2009, so we had been</p> <p>11:58:32 23 operating with a contract -- no, excuse me, not a</p> <p>11:58:36 24 contract. A memorandum of understanding between the</p> <p>11:58:40 25 health department and the Utah State Office of Education.</p>

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<p>12:03:39 1 THE WITNESS: There is a C20 I think is the 12:03:42 2 term on it. 12:03:43 3 MR. ROBINSON: C20. 12:03:44 4 THE WITNESS: Grant award. 12:03:45 5 MR. ROBINSON: C20 grant award, and what year 12:03:49 6 are we talking about? 12:03:50 7 THE WITNESS: It followed after Patti 12:03:52 8 Harrington retracted, rescinded the MOA with the Utah 12:03:58 9 Department of Health. 12:03:58 10 BY MS. DONOSSO: 12:03:59 11 Q. So that MOA was in 2008 and then -- that is 12:04:03 12 correct, I just saw this document yesterday. 12:04:06 13 A. Uh-huh. Uh-huh. Uh-huh. 12:04:07 14 Q. -- as I was preparing for this, and then 12:04:09 15 thereafter Carol Leer was involved; is that correct? Do 12:04:12 16 you recognize that name? 12:04:14 17 A. Yes. 12:04:14 18 Q. And then after that there was just a simple 12:04:17 19 letter that was sent out that said with these parameters 12:04:22 20 and it was like -- it was a list, now we feel comfortable 12:04:25 21 with you guys using this data. Is that what you're 12:04:29 22 talking about? There was like a letter sent, kind of 12:04:31 23 like an MOA that just kind of listed it out, but it was 12:04:35 24 not a contract between you and anybody. It was just like 12:04:38 25 a letter.</p>	<p>12:04:39 1 A. It was a grant award that I was listed as the 12:04:42 2 PI. It went through the Office of Sponsored Projects. 12:04:46 3 Q. So that's different. If it went through the 12:04:49 4 Office of Sponsored Projects, it didn't come from the 12:04:53 5 Utah State Office of Education then. 12:04:55 6 A. Let me -- let me see if I can clarify. 12:04:56 7 MR. ROBINSON: Was it a CDC grant award? 12:04:59 8 THE WITNESS: Let me see if I can clarify for 12:05:00 9 you. So the CDC, so we collected identifiable health and 12:05:06 10 education data. 12:05:07 11 BY MS. DONOSSO: 12:05:07 12 Q. Okay. You're confusing the issue. Let's -- 12:05:10 13 let's -- 12:05:10 14 MS. LEONARD: She's trying to clarifying. 12:05:10 15 BY MS. DONOSSO: 12:05:12 16 Q. Because you just told me that you felt that 12:05:14 17 the Utah State Office of Education gave you the 12:05:18 18 jurisdiction or authority and only you to have access to 12:05:23 19 this data. 12:05:24 20 MR. ROBINSON: You called it a contract. 12:05:25 21 BY MS. DONOSSO: 12:05:25 22 Q. You called it a contract, so we need to go 12:05:28 23 find this contract. 12:05:29 24 A. You know, I'm not sure in terms of the legal 12:05:32 25 terms that you want to use for this.</p>
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<p>12:05:34 1 Q. And usually the Utah State Office of 12:05:40 2 Education only uses MOUs or MOAs. 12:05:42 3 A. It was -- I was paid -- so the CDC, so there 12:05:45 4 was a position statement from the US Department of 12:05:49 5 Education that the MOAs were not in compliance with FERPA 12:05:56 6 that education departments were using to do CDC 12:06:00 7 surveillance activities, so they advised people to do a 12:06:07 8 contract and pay the person to do it. So whether you 12:06:13 9 want to call it a grant award or contract, that was how I 12:06:17 10 got the authority to collect the data, school data, and 12:06:22 11 the health department made a decision not to be involved 12:06:26 12 in that and that they would only request back from me 12:06:30 13 health data. 12:06:32 14 MR. ROBINSON: So all I want to know is the 12:06:34 15 document. Can you identify the document on which you 12:06:36 16 relied? 12:06:37 17 THE WITNESS: I will -- we can give you the 12:06:41 18 discovery items that we've provided to you. 12:06:45 19 MR. ROBINSON: Well, that doesn't help me. 12:06:49 20 Ashley, can you provide us with a Bates 12:06:51 21 number or something that identifies the document that she 12:06:54 22 relies on for this concept that she and only she can have 12:06:57 23 access to the URADD data? 12:06:59 24 MS. LEONARD: We can go back and look through 12:07:02 25 our list but I can't do that right now.</p>	<p>12:07:05 1 MR. ROBINSON: During the lunch break? 12:07:10 2 MS. LEONARD: I don't have my computer with 12:07:11 3 me. 12:07:11 4 THE WITNESS: I was following the directions 12:07:14 5 that the Utah State Office of Education gave me to allow 12:07:22 6 us -- them to continue to collect data for the CDC grant. 12:07:27 7 MR. ROBINSON: So you believe this document 12:07:30 8 that she's referring to is within the initial disclosure 12:07:32 9 documents that were produced? 12:07:33 10 MS. LEONARD: Yes. 12:07:34 11 MR. ROBINSON: Okay. Very good. Are we 12:07:39 12 going to take a lunch? 12:07:41 13 MS. DONOSSO: We are. 12:07:41 14 Q. We're going to take a lunch and I'm going to 12:07:44 15 go pull that document that says -- I mean, after the USOE 12:07:47 16 said we have issues with your data, they then sent a 12:07:51 17 letter back saying we feel -- you sent them a letter 12:07:54 18 saying -- let me clarify this, you then sent them a 12:07:57 19 letter saying I think if I do this, this will address 12:08:01 20 your concerns and then they sent a letter back saying, 12:08:04 21 yes, we think that if this is done, this will address 12:08:06 22 everything. 12:08:06 23 A. They directed how it was to be handled, their 12:08:09 24 lawyers at the Utah State office. 12:08:11 25 Q. And that final document, you believe that</p>

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<p>12:08:13 1 final document is what gives you the authority to do that</p> <p>12:08:16 2 once all of those drafts back and forth went through, you</p> <p>12:08:20 3 believe that's what gives you the authority to do that?</p> <p>12:08:23 4 A. To do what?</p> <p>12:08:25 5 Q. To be able to be the person who gathers and</p> <p>12:08:30 6 collects data.</p> <p>12:08:33 7 A. Yes.</p> <p>12:08:33 8 MR. ROBINSON: And nobody else can have</p> <p>12:08:33 9 access to it but you?</p> <p>12:08:34 10 THE WITNESS: According to the CDC</p> <p>12:08:36 11 guidelines, I can't share.</p> <p>12:08:37 12 MR. ROBINSON: I just want to know what</p> <p>12:08:39 13 document you're lying on for that proposition.</p> <p>12:08:40 14 BY MS. DONOSSO:</p> <p>12:08:40 15 Q. Because Utah State Office of Education is</p> <p>12:08:42 16 very different than CDC. They're separate entities. Do</p> <p>12:08:47 17 you agree with that?</p> <p>12:08:49 18 MS. LEONARD: She realizes that.</p> <p>12:08:51 19 THE WITNESS: I realize that.</p> <p>12:08:52 20 BY MS. DONOSSO:</p> <p>12:08:52 21 Q. Okay.</p> <p>12:08:54 22 A. That -- that is the crux of my questions to</p> <p>12:08:56 23 the privacy office.</p> <p>12:08:59 24 Q. Okay. We'll take a lunch break and go look</p> <p>12:09:07 25 for that document.</p>	<p>12:09:08 1 MS. LEONARD: What time do you want to be</p> <p>12:09:10 2 back?</p> <p>12:09:11 3 MS. DONOSSO: Maybe 1:00.</p> <p>12:09:19 4 (Whereupon a recess was taken.)</p> <p>12:09:19 5 BY MS. DONOSSO:</p> <p>13:11:00 6 Q. Okay. Prior to the break, you had testified</p> <p>13:11:08 7 that in your initial disclosures you believed that you</p> <p>13:11:14 8 had provided us a document that gave you authorization to</p> <p>13:11:27 9 have control over the data from the Utah State Office of</p> <p>13:11:40 10 Education; is that correct?</p> <p>13:11:41 11 A. Yes.</p> <p>13:11:42 12 Q. Okay, so during the break, we went through</p> <p>13:11:53 13 and we found, because I want to make sure we're all on</p> <p>13:12:00 14 the same page, we found the original MOU that is dated</p> <p>13:12:12 15 July 1st of 2008. We produced it in discovery. It was</p> <p>13:12:17 16 Zimmerman PRD855 through 857, so we'll go ahead and now</p> <p>13:12:25 17 produce it as what will be marked as Exhibit 80.</p> <p>13:12:42 18 (Whereupon Exhibit 80 was marked for identification.)</p> <p>13:12:42 19 BY MS. DONOSSO:</p> <p>13:12:43 20 Q. Do you recognize that document?</p> <p>13:12:44 21 A. This is the second, not the original MOA with</p> <p>13:12:48 22 the Utah Department of Health and Utah State Office of</p> <p>13:12:53 23 Education.</p> <p>13:12:53 24 Q. That's correct. The original one is dated</p> <p>13:12:57 25 2004. So that is the second one that is dated 2008;</p>
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<p>13:13:02 1 correct?</p> <p>13:13:02 2 A. Yes.</p> <p>13:13:03 3 Q. And then after a year later in 2009, you</p> <p>13:13:07 4 received a letter signed from Dr. Patti Harrington</p> <p>13:13:14 5 informing you that she regretted that she had to rescind</p> <p>13:13:18 6 the MOA signed in 2008. I will now give what we will go</p> <p>13:13:37 7 ahead and mark as Exhibit No. 81.</p> <p>13:13:37 8 (Whereupon Exhibit 81 was marked for identification.)</p> <p>13:13:37 9 BY MS. DONOSSO:</p> <p>13:13:37 10 Q. That was also produced by us with PRD numbers</p> <p>13:13:43 11 955. Do you recognize that letter?</p> <p>13:13:44 12 A. This is a letter not to me but it's to the</p> <p>13:13:47 13 health department.</p> <p>13:13:48 14 Q. Yeah, but you were --</p> <p>13:13:48 15 A. Ce'd.</p> <p>13:13:48 16 Q. -- ce'd on it at the bottom. Is that a true</p> <p>13:13:53 17 and correct copy that you received from Dr. Harrington?</p> <p>13:13:56 18 A. Yes.</p> <p>13:13:56 19 Q. Okay, and it's your testimony that sometime</p> <p>13:13:59 20 thereafter you received some documentation that you</p> <p>13:14:07 21 believed gave you the authority to be able to exclusively</p> <p>13:14:12 22 access the data from the State Office of Education; is</p> <p>13:14:17 23 that correct?</p> <p>13:14:18 24 A. I received a document that allowed us to</p> <p>13:14:21 25 collect education data for grant activities from the Utah</p>	<p>13:14:27 1 State Office of Education.</p> <p>13:14:27 2 Q. And you previously testified that you -- it</p> <p>13:14:30 3 is your recollection that you gave me that document in</p> <p>13:14:34 4 discovery; is that correct?</p> <p>13:14:39 5 A. Yeah.</p> <p>13:14:40 6 Q. Okay. Here is what you provided to me as</p> <p>13:14:46 7 part of your initial disclosures. It was marked</p> <p>13:14:52 8 Documents 1 through 55 and this is what was supplemented</p> <p>13:14:56 9 to me a couple days ago. I would now like you to go</p> <p>13:15:01 10 through these binders and show to me what is that</p> <p>13:15:03 11 document that gives you authority to exclusively access</p> <p>13:15:08 12 that information.</p> <p>13:15:10 13 MS. LEONARD: You really want her to go</p> <p>13:15:13 14 through all of this?</p> <p>13:15:14 15 MS. DONOSSO: I really do want to.</p> <p>13:15:17 16 MS. LEONARD: Well, this is an exhibit book</p> <p>13:15:18 17 of the exhibits that we've used so far and Documents 1</p> <p>13:15:21 18 through 558, we're going to spend time to go through all</p> <p>13:15:27 19 of those?</p> <p>13:15:28 20 MS. DONOSSO: Right.</p> <p>13:15:29 21 THE WITNESS: And aren't there 5,000</p> <p>13:15:31 22 documents?</p> <p>13:15:32 23 MS. DONOSSO: No, there aren't.</p> <p>13:15:33 24 MR. ROBINSON: No, but these are the</p> <p>13:15:35 25 documents you produced.</p>

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<p>13:31:13 1 else.</p> <p>13:31:13 2 MR. ROBINSON: Okay. That is my question.</p> <p>13:31:15 3 THE WITNESS: Okay. Thank you.</p> <p>13:31:17 4 MR. ROBINSON: That's your answer to my</p> <p>13:31:19 5 question, yes.</p> <p>13:31:24 6 MS. DONOSSO: Let me go make a copy of this</p> <p>13:31:27 7 document.</p> <p>13:31:27 8 MR. ROBINSON: Do you want me to go do that?</p> <p>13:31:29 9 MS. DONOSSO: Okay.</p> <p>13:31:45 10 THE WITNESS: There is also an earlier Jordan</p> <p>13:31:51 11 School District contract. I'll keep looking to see if</p> <p>13:31:54 12 that is in here as well.</p> <p>13:33:46 13 Here's the other one from Jordan, 411.</p> <p>13:34:59 14 Here are some E-mails between me and Jocelyn</p> <p>13:35:03 15 Taylor, 421 and 422, 426, 437 and 439.</p> <p>13:38:45 16 I contacted the state office to see if they</p> <p>13:38:51 17 had approved any agreement with McMahon.</p> <p>13:38:57 18 MR. ROBINSON: Well, I think we're getting</p> <p>13:39:00 19 beyond the scope of what you're supposed to be looking</p> <p>13:39:02 20 for.</p> <p>13:39:03 21 THE WITNESS: Are you done? Do you want me</p> <p>13:39:05 22 to keep looking?</p> <p>13:39:07 23 MR. ROBINSON: Let's make sure you understand</p> <p>13:39:09 24 the parameter of our inquiry, because your testimony, Dr.</p> <p>13:39:11 25 Zimmerman, was that you had a contract and then you</p>	<p>13:39:16 1 weren't sure if it was a contract but you said there was</p> <p>13:39:18 2 a document from the Utah State Office of Education that</p> <p>13:39:24 3 gave you exclusive authority to access the URADD data, so</p> <p>13:39:30 4 that is the document we're asking you to look for. Now,</p> <p>13:39:33 5 I don't know if any -- I mean, what I've seen so far --</p> <p>13:39:35 6 MS. DONOSSO: None of these are from the Utah</p> <p>13:39:37 7 State Office of Education.</p> <p>13:39:37 8 MR. ROBINSON: -- these came from the Jordan</p> <p>13:39:40 9 School District. There's a University of Utah letter. I</p> <p>13:39:43 10 mean, where is the document that you claim --</p> <p>13:39:47 11 THE WITNESS: Look at C20 and the agreement.</p> <p>13:39:51 12 MR. ROBINSON: C20.</p> <p>13:39:53 13 THE WITNESS: Grant award. I had a grant</p> <p>13:39:55 14 from education.</p> <p>13:39:58 15 MR. ROBINSON: I just want to know what</p> <p>13:39:59 16 document you rely for the proposition that you have</p> <p>13:40:05 17 exclusive authority to access the URADD data.</p> <p>13:40:09 18 THE WITNESS: I have just provided them to</p> <p>13:40:12 19 you.</p> <p>13:40:12 20 MR. ROBINSON: So all those documents that</p> <p>13:40:14 21 you pulled are the ones that you think do that; is that</p> <p>13:40:17 22 correct?</p> <p>13:40:18 23 THE WITNESS: Yes.</p> <p>13:40:18 24 MR. ROBINSON: Okay, so I'll go make copies</p> <p>13:40:21 25 of all of these and then we can mark them all as an</p>
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<p>13:40:25 1 exhibit and identify them for the record so we know which</p> <p>13:40:30 2 documents we're talking about.</p> <p>13:40:30 3 BY MS. DONOSSO:</p> <p>13:40:33 4 Q. You do realize the C20 is just a fund</p> <p>13:40:40 5 approval form that is signed by Patti and it's just a</p> <p>13:40:45 6 \$10,000 award and nowhere on this document does it say</p> <p>13:40:52 7 something to the effect of Judy Zimmerman has exclusive</p> <p>13:40:58 8 control of the data?</p> <p>13:41:01 9 A. My testimony is that I could not release data</p> <p>13:41:05 10 that I obtained unless I had approval from the data</p> <p>13:41:09 11 source. If Jocelyn Taylor or the state office requested</p> <p>13:41:14 12 me to get -- give any other person the data that I</p> <p>13:41:19 13 collected in their behalf, I would have been happy to</p> <p>13:41:23 14 give it to them.</p> <p>13:41:24 15 Q. That's correct, but you say this is the</p> <p>13:41:26 16 document that does that because it has Patti's signature</p> <p>13:41:29 17 and Jocelyn's name on it, but this -- all that this does</p> <p>13:41:35 18 is give you an amount or an amount of amendment of</p> <p>13:41:39 19 \$10,000 and it says objective of award four, six- and</p> <p>13:41:45 20 eight-year-old pupils in 2006 living in Utah, and then it</p> <p>13:41:49 21 has one through five, and it just says mean age of</p> <p>13:41:54 22 pupils, prevalent differences, classification shifting</p> <p>13:41:56 23 over time, autism exceptionality, proportion of pupils</p> <p>13:42:01 24 and then it's dated May 20th of 2009. Nowhere does it</p> <p>13:42:06 25 say Judith Zimmerman is the only person who controls this</p>	<p>13:42:12 1 data.</p> <p>13:42:12 2 MS. LEONARD: What is your question to that?</p> <p>13:42:14 3 BY MS. DONOSSO:</p> <p>13:42:14 4 Q. How does this document give you the sole</p> <p>13:42:17 5 authority to control that data?</p> <p>13:42:19 6 MS. LEONARD: And I'll object to the</p> <p>13:42:20 7 question. It misstates her testimony. She's testified</p> <p>13:42:23 8 that the collective documents that she's just provided --</p> <p>13:42:27 9 MS. DONOSSO: Okay. Let's go through the</p> <p>13:42:29 10 next document.</p> <p>13:42:30 11 MR. ROBINSON: Let's get copies and mark</p> <p>13:42:32 12 those, so they're part of the record.</p> <p>13:44:07 13 THE WITNESS: Can I run to the restroom?</p> <p>13:44:13 14 MS. LEONARD: Sure.</p> <p>13:44:13 15 COURT REPORTER: Go off record?</p> <p>13:44:15 16 MS. DONOSSO: Yeah.</p> <p>13:44:32 17 (Whereupon a recess was taken.)</p> <p>13:50:25 18 (Whereupon Exhibit 82 was marked for identification.)</p> <p>13:50:25 19 BY MS. DONOSSO:</p> <p>13:50:25 20 Q. I've handed what we will now mark as Exhibit</p> <p>13:50:30 21 No. 82. This is a packet of documents that you have</p> <p>13:50:35 22 taken out the binder of documents that you produced to us</p> <p>13:50:42 23 as part of your initial disclosures and these are the</p> <p>13:50:48 24 documents that you believe -- that you believe support</p> <p>13:50:57 25 your notion of being the documents that show that you had</p>

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<p>13:51:03 1 authority from the Utah State Office of Education to</p> <p>13:51:06 2 exclusively have exclusive authority over the URADD data;</p> <p>13:51:14 3 is that correct?</p> <p>13:51:15 4 A. These are the documents that I gave to the</p> <p>13:51:18 5 privacy office to seek clarification if identifiable data</p> <p>13:51:24 6 that I collected from the Utah State Office of Education</p> <p>13:51:28 7 and local school districts if I was allowed to do that.</p> <p>13:51:33 8 Q. Okay, so let's go through each of these</p> <p>13:51:41 9 documents separately. Let's begin with the one on top</p> <p>13:51:45 10 that is dated November 9th, 2011. Do you see that one on</p> <p>13:51:51 11 top?</p> <p>13:51:52 12 A. Yes.</p> <p>13:51:52 13 Q. It is JPZ 314 through 315.</p> <p>13:51:59 14 A. Yes.</p> <p>13:52:00 15 Q. This is a letter that is signed -- actually</p> <p>13:52:04 16 it's not signed by Clyde Mason. It's signed by you and</p> <p>13:52:09 17 Amy Henderson. And it's regarding a project that</p> <p>13:52:20 18 apparently was similar to a project that was conducted in</p> <p>13:52:24 19 2005 and it proposes some procedural safeguards regarding</p> <p>13:52:31 20 the Jordan School District, some Jordan School District</p> <p>13:52:36 21 information from the Jordan School District; is that</p> <p>13:52:39 22 correct?</p> <p>13:52:40 23 A. Yes.</p> <p>13:52:40 24 Q. So how do you believe that the safeguards</p> <p>13:52:45 25 that are listed in this letter gives you exclusive</p>	<p>13:52:50 1 authority over the information of school children</p> <p>13:52:58 2 provided by the Utah State Office of Education?</p> <p>13:53:01 3 A. Item No. 1, and will not be disclosed to any</p> <p>13:53:05 4 other party and will be stripped of all and any personal</p> <p>13:53:09 5 and identifiable information.</p> <p>13:53:10 6 Q. Now, this letter is addressed to Ms.</p> <p>13:53:15 7 Henderson. It's not addressed to you. So Item No. 1,</p> <p>13:53:19 8 nowhere does it say Dr. Zimmerman is the only person who</p> <p>13:53:24 9 has exclusive authority over this information; is that</p> <p>13:53:27 10 correct?</p> <p>13:53:28 11 A. It is saying that I can't disclose it to</p> <p>13:53:31 12 another party not involved in URADD.</p> <p>13:53:35 13 Q. That is correct. It says data obtained in</p> <p>13:53:39 14 this project will be retained by URADD in compliance with</p> <p>13:53:43 15 FERPA and will not be disclosed to any other party. Now,</p> <p>13:53:49 16 that would imply that anybody working in your suite, like</p> <p>13:53:54 17 your abstractors, Dr. Bilder, Dr. McMahon, your</p> <p>13:53:59 18 epidemiologist, anybody working in the project would have</p> <p>13:54:01 19 access to this data.</p> <p>13:54:02 20 A. The only people we gave access to the data</p> <p>13:54:05 21 was under minimum necessary to do their work, so if they</p> <p>13:54:09 22 needed identifiable data to do their work, they had</p> <p>13:54:12 23 access; if they didn't, they didn't have access.</p> <p>13:54:15 24 Q. Because you work with other people on this</p> <p>13:54:17 25 project; correct?</p>
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<p>13:54:22 1 A. The CDC grant staff, yes.</p> <p>13:54:24 2 Q. And you also worked with other people on</p> <p>13:54:28 3 URADD. You were not only the URADD employee, you were</p> <p>13:54:33 4 not the only person working in the URADD grant?</p> <p>13:54:37 5 A. Dr. Bilder was not working on the grant,</p> <p>13:54:39 6 neither was Dr. McMahon.</p> <p>13:54:42 7 Q. Did Dr. Bakian work on the URADD grant?</p> <p>13:54:45 8 A. She did until June of 2012.</p> <p>13:54:48 9 Q. Did anybody else work under the URADD grant?</p> <p>13:54:52 10 A. The data abstractors and the project</p> <p>13:54:55 11 coordinator.</p> <p>13:54:56 12 Q. So they would've had to have access; correct?</p> <p>13:54:58 13 A. They were part of the URADD project, yes.</p> <p>13:55:00 14 Q. Okay, so why would you interpret that</p> <p>13:55:03 15 language to mean that only you would have access to that</p> <p>13:55:07 16 information?</p> <p>13:55:07 17 A. I said the URADD project would have access to</p> <p>13:55:11 18 it as related to what was necessary for them to do their</p> <p>13:55:17 19 work, so, for example, a clinician reviewer would have</p> <p>13:55:23 20 been part of the URADD project but would have no need to</p> <p>13:55:27 21 see identifiable data, and was, therefore, not given any</p> <p>13:55:30 22 access to identifiable information, so it was based on</p> <p>13:55:35 23 the ability for them to do their job.</p> <p>13:55:39 24 Q. So you were not the only exclusive party who</p> <p>13:55:44 25 would be able to access the data?</p>	<p>13:55:45 1 A. The CDC grant staff had access to the data on</p> <p>13:55:49 2 the basis of need to know to do their job.</p> <p>13:55:53 3 Q. So this letter does not say you're the</p> <p>13:55:56 4 exclusive person authorized to work on the URADD project?</p> <p>13:56:03 5 A. My -- I don't know what you want me to say.</p> <p>13:56:06 6 Q. I just want you to answer my question.</p> <p>13:56:08 7 A. I thought I did. The project had access, so</p> <p>13:56:14 8 me alone, no; my staff, yes.</p> <p>13:56:17 9 Q. Okay.</p> <p>13:56:20 10 MR. ROBINSON: Anybody working on the URADD</p> <p>13:56:22 11 project?</p> <p>13:56:23 12 THE WITNESS: If you mean the CDC grant, yes.</p> <p>13:56:27 13 MR. ROBINSON: Anybody working --</p> <p>13:56:27 14 THE WITNESS: No.</p> <p>13:56:28 15 MR. ROBINSON: -- on the URADD project had</p> <p>13:56:30 16 access to the URADD data?</p> <p>13:56:32 17 THE WITNESS: No.</p> <p>13:56:32 18 BY MS. DONOSSO:</p> <p>13:56:36 19 Q. Then how could they help you do their job? I</p> <p>13:56:39 20 mean, you're not an epidemiologist. I mean, someone</p> <p>13:56:44 21 would have to help you. Amanda Bakian would have to help</p> <p>13:56:47 22 you while she's working on that grant.</p> <p>13:56:51 23 A. People were given access based on their need</p> <p>13:56:53 24 to do their job.</p> <p>13:56:55 25 Q. That's correct. As long as they needed to</p>

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<p>14:02:08 1 "thank you for your interest." Where in this letter does 14:02:11 2 it say something to the effect of Judy Zimmerman is the 14:02:15 3 only person who has the exclusive control or jurisdiction 14:02:18 4 over URADD or the database? 14:02:20 5 A. So I sought legal clarification from Lyle 14:02:26 6 Odendahl in 2006, 2007, and the health department gave a 14:02:31 7 legal opinion that we did not have the authority to 14:02:35 8 release any data to the CDC, including deidentified data, 14:02:40 9 because of this agreement. 14:02:41 10 Q. Okay. That's not my question, ma'am. Where 14:02:44 11 in this letter does it say that you are the only person 14:02:47 12 who is authorized to have control over URADD or over the 14:02:51 13 registry or over the database or over the data? 14:02:58 14 MS. LEONARD: Objection. Asked and answered. 14:03:00 15 She's testified multiple times that she and her staff 14:03:05 16 were the only ones who had access to the CDC data. 14:03:09 17 You can answer. 14:03:10 18 THE WITNESS: Yes. 14:03:12 19 MR. ROBINSON: Yes, what? 14:03:13 20 BY MS. DONOSSO: 14:03:14 21 Q. Yes, what? 14:03:14 22 A. Yes, my staff and I were the only ones that 14:03:18 23 had access to that data. That was my understanding. 14:03:20 24 MR. ROBINSON: That doesn't answer the 14:03:22 25 question.</p>	<p>14:03:23 1 THE WITNESS: I'm sorry. 14:03:23 2 BY MS. DONOSSO: 14:03:24 3 Q. You've told me that these are the documents 14:03:27 4 that you believed give you the authority to have access 14:03:32 5 to the data. 14:03:33 6 A. And I have indicated that I sought legal 14:03:36 7 counsel. 14:03:36 8 Q. And you then used these documents to go file 14:03:39 9 complaints with the IRB because you felt that this is 14:03:42 10 what gave you the authority to do that, and I'm asking 14:03:45 11 you where on these documents it states that you're the 14:03:50 12 person who is authorized to do that? 14:03:52 13 A. Because I received the authorization from the 14:03:55 14 district as a grantee to do the study. 14:03:59 15 Q. Okay, so show me where these documents say 14:04:02 16 that. 14:04:05 17 MR. ROBINSON: Your counsel can't answer the 14:04:07 18 question for you, Dr. Zimmerman. You need to answer it 14:04:10 19 yourself. 14:04:10 20 THE WITNESS: I'm not sure I understand your 14:04:12 21 question. I've answered it the best I can. 14:04:14 22 BY MS. DONOSSO: 14:04:14 23 Q. Are there other documents besides these 14:04:16 24 documents that show that? 14:04:17 25 A. I'm sure the State Office of Education has</p>
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<p>14:04:20 1 records regarding these contracts and agreements. 14:04:24 2 Q. Then why haven't you provided those to us 14:04:27 3 during discovery, if they exist? 14:04:28 4 A. Because I don't have access to them. The 14:04:31 5 Utah State Office of Education would. 14:04:34 6 Q. Then why hasn't your counsel requested them 14:04:37 7 during this lawsuit? She can access them through GRAMA. 14:04:42 8 She can access them through any other means. 14:04:47 9 MS. LEONARD: It would be speculation on 14:04:49 10 Judy's part why I didn't do something. 14:04:49 11 BY MS. DONOSSO: 14:04:52 12 Q. Okay. Are these -- let's continue through 14:04:54 13 these. These are the only documents that you found in 14:04:57 14 that binder that you've produced that you believe gave 14:04:59 15 you the authority; is that correct? 14:05:01 16 A. So far, yes. 14:05:02 17 Q. Okay. 14:05:03 18 MR. ROBINSON: So far? 14:05:05 19 THE WITNESS: I finished. I didn't go 14:05:07 20 through the rest. I stopped when I found these. 14:05:10 21 MS. LEONARD: She went through that binder. 14:05:12 22 MR. ROBINSON: She went through this binder? 14:05:15 23 MS. LEONARD: Yes. 14:05:15 24 MR. ROBINSON: And earlier you told us that 14:05:17 25 the document was in that binder.</p>	<p>14:05:17 1 MS. LEONARD: I don't know what this binder 14:05:17 2 is. 14:05:19 3 MR. ROBINSON: Those are the supplemental 14:05:21 4 documents that were produced just this week. 14:05:23 5 MS. DONOSSO: Are there any more in the 14:05:29 6 supplemental binder that we should let her review after 14:05:33 7 I'm done with these? 14:05:33 8 MS. LEONARD: I don't think so. I don't 14:05:34 9 know. There are over 400 documents in there. I don't 14:05:35 10 know. 14:05:35 11 MR. ROBINSON: Okay. Well, earlier before we 14:05:37 12 took lunch, we asked if the contract was in the documents 14:05:44 13 that you originally produced or the supplemental and you 14:05:48 14 told us the original ones. 14:05:50 15 MS. LEONARD: Yes. 14:05:50 16 MR. ROBINSON: Okay, so the original ones are 14:05:52 17 in this binder that you just went through, so you found 14:05:53 18 everything in this binder that you thought applied; is 14:05:56 19 that correct? 14:05:57 20 THE WITNESS: Let me look through these 14:06:00 21 again. That were in my possession, yes. 14:06:07 22 MR. ROBINSON: I understand that. So the 14:06:13 23 answer is yes? 14:06:14 24 MS. DONOSSO: We can proceed? 14:06:29 25 THE WITNESS: Yes.</p>

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<p>14:13:20 1 A. But I think on face value, it does make me 14:13:24 2 responsible to know where the data is. 14:13:26 3 Q. But this is just a proposal. 14:13:29 4 A. This is the grant award, so I'm responsible 14:13:33 5 for the project, and it's not good if you don't know 14:13:41 6 where the data is. 14:13:46 7 Q. But if someone were to pick up this document, 14:13:49 8 nowhere does it say -- nowhere does this document on its 14:13:52 9 face give you exclusive authority over the data? 14:13:56 10 A. As a principal investigator, I think it does. 14:14:01 11 Q. That's your opinion? 14:14:02 12 A. That is my opinion. 14:14:03 13 Q. Okay. Okay. Next document, it's dated May 14:14:11 14 11th, 2010, and it has Bates JPZ 437. It's a letter 14:14:23 15 again from Mr. Mason and it says: "Your request to 14:14:30 16 modify your currently approved research project to allow 14:14:34 17 for a pooled data set has been approved. We recognize 14:14:40 18 the value of the maintaining the data set," etc., etc. 14:14:45 19 "We appreciate your ongoing research." Again, nowhere 14:14:50 20 does this give you exclusive authority over the Jordan 14:14:57 21 School District or the Utah State Office of Education or 14:15:01 22 URADD'S registry or database; is that correct? 14:15:03 23 A. This letter gives me the authority to share 14:15:07 24 the data I collected with Jordan School District in a 14:15:11 25 deidentified data set with the CDC, so this letter tells</p>	<p>14:15:17 1 me who I can share the data with and in what form. 14:15:21 2 Q. But it doesn't give you the exclusive 14:15:24 3 authority over the data? 14:15:28 4 A. They have -- they're the data source and any 14:15:31 5 ability for me to share the data would need to go through 14:15:34 6 them. 14:15:35 7 Q. That's correct, they're the data source, yes, 14:15:38 8 but you previously testified that these documents gave 14:15:41 9 you the exclusive authority over the data. 14:15:44 10 A. That -- 14:15:46 11 MS. LEONARD: Misstates testimony. 14:15:47 12 You can answer. 14:15:48 13 THE WITNESS: My -- that was why I went to 14:15:51 14 the privacy office to get clarification if I could share 14:15:55 15 the data and in what form. 14:15:55 16 BY MS. DONOSSO: 14:15:59 17 Q. So let me ask my question again. This letter 14:16:01 18 does not give you the exclusive authority over the data; 14:16:05 19 is that correct? 14:16:09 20 A. I never had -- I'm not sure. I mean, you 14:16:14 21 keep asking the same thing over and over again and my 14:16:17 22 answer is same. They gave me access to their data to 14:16:20 23 use. I agreed not to share it without their permission. 14:16:26 24 But does this explicitly outline every detail of that 14:16:30 25 agreement? No.</p>
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<p>14:16:31 1 Q. Okay, and this doesn't say Judy Zimmerman is 14:16:35 2 the only person who has exclusive authority over URADD or 14:16:39 3 the data? 14:16:40 4 A. I was the principal investigator and I was 14:16:43 5 responsible for the study, so I believed I did. I was 14:16:47 6 responsible for it. 14:16:47 7 Q. But this letter does not say that? 14:16:50 8 A. It's addressed to us and I give the same 14:16:54 9 answer I've said to all of your other questions. 14:16:57 10 Q. But can you answer it in regards to this 14:16:59 11 letter? 14:16:59 12 A. I don't have a different answer for this 14:17:02 13 letter. 14:17:05 14 Q. Okay. Next document. This is Utah State 14:17:11 15 Office of Education Standard Application for Financial 14:17:13 16 Assistance. I guess it's several pages. Oh, it's two 14:17:22 17 pages, 439 through 440. Were you applying on behalf of 14:17:34 18 the Department of Psychiatry? 14:17:36 19 A. On 427? 14:17:38 20 MS. LEONARD: 439. 14:17:40 21 BY MS. DONOSSO: 14:17:40 22 Q. 439 through 440. No, because it says Jocelyn 14:17:49 23 Taylor is your immediate supervisor. So I guess this was 14:17:52 24 still while you were at the Department of Health? 14:17:53 25 MR. ROBINSON: Huh-uh, I believe it's 2012.</p>	<p>14:17:53 1 BY MS. DONOSSO: 14:17:58 2 Q. Oh, no, it is dated 2012. So beginning the 14:18:13 3 project 2011. How does this application for financial 14:18:17 4 assistance give you any sort of exclusive access to the 14:18:24 5 data? 14:18:26 6 A. Because I was the principal investigator and 14:18:28 7 I was responsible for the project. 14:18:30 8 Q. So it's your testimony that any time that you 14:18:46 9 applied for an IRB or for a grant and your name was on 14:18:51 10 the application as a PI, that you felt that that was what 14:18:55 11 was giving you authority to claim access or to claim 14:19:00 12 executive right over the data? 14:19:03 13 A. It involved multiple -- so for this specific 14:19:08 14 study, the school districts were told that their 14:19:12 15 confidentiality would be maintained as per the CDC 14:19:17 16 requirements for the cooperative agreement. 14:19:20 17 Q. But during the period of 2011, you were 14:19:25 18 employed as research professor at the University of Utah; 14:19:30 19 is that correct? 14:19:31 20 A. An assistant research professor, yes. 14:19:34 21 Q. Okay, and you were attending all of these 14:19:38 22 meetings with Jocelyn, with Harper, and all these 14:19:47 23 conferences at the CDC as an assistant research professor 14:19:49 24 at the University of Utah? 14:19:50 25 A. As I said previously, the health department</p>

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<p>14:19:53 1 decided not to enter into any agreements with education</p> <p>14:19:56 2 during this time period.</p> <p>14:19:57 3 Q. That wasn't my question. All of these</p> <p>14:20:00 4 meetings, all of these grants, in fact, the E-mail you</p> <p>14:20:03 5 were using, judithzimmerman@hacutahedu, all of these</p> <p>14:20:11 6 grant applications, all those proposals, all these</p> <p>14:20:14 7 meetings you were doing as an employee of the University</p> <p>14:20:17 8 of Utah?</p> <p>14:20:17 9 A. Yes.</p> <p>14:20:17 10 Q. Next document, and I believe this is the</p> <p>14:20:26 11 final one, it's JPZ 441 through 443. It's another</p> <p>14:20:38 12 E-proposal document summary sheet and I guess it's --</p> <p>14:20:43 13 it's also to the Office of Sponsored Projects, so I'll</p> <p>14:20:54 14 ask you again how does this proposal give you authority</p> <p>14:21:05 15 over -- I guess this is for \$10,000 again. How does this</p> <p>14:21:09 16 give you exclusive authority over the registry or the</p> <p>14:21:15 17 data that you were getting from any of the school</p> <p>14:21:18 18 districts or from the Utah State Office of Education that</p> <p>14:21:20 19 was going into the registry for URADD?</p> <p>14:21:24 20 A. As the principal investigator, I thought I</p> <p>14:21:26 21 was -- I did not -- I had the authority to maintain</p> <p>14:21:30 22 confidentiality.</p> <p>14:21:38 23 Q. Okay. One last document. I guess it's Bates</p> <p>14:21:42 24 numbered JPZ 492. Do you have that in front of you or</p> <p>14:21:48 25 was that just something else that was put accidentally in</p>	<p>14:21:52 1 front of me?</p> <p>14:21:53 2 MS. LEONARD: We have it.</p> <p>14:21:54 3 MR. ROBINSON: I think it's the last page of</p> <p>14:21:56 4 the exhibit.</p> <p>14:21:56 5 BY MS. DONOSSO:</p> <p>14:21:56 6 Q. So this is an E-mail to Jeff Botkin, dated</p> <p>14:22:01 7 December 4th, and it just says: "Just an FYI, my liaison</p> <p>14:22:06 8 at the Utah State Office of Education has indicated that</p> <p>14:22:08 9 they do not have a contractual agreement with Dr.</p> <p>14:22:11 10 McMahon." Do you recognize this E-mail?</p> <p>14:22:13 11 A. Uh-huh, yes.</p> <p>14:22:14 12 Q. Is it a true and correct copy of the E-mail</p> <p>14:22:17 13 that you sent to Mr. Botkin on that date?</p> <p>14:22:18 14 A. Yes.</p> <p>14:22:19 15 Q. And how do you believe that this E-mail gave</p> <p>14:22:23 16 you the exclusive jurisdiction over the URADD database?</p> <p>14:22:30 17 A. I contacted Jocelyn Taylor, my supervisor at</p> <p>14:22:33 18 the State Office of Education, and specifically asked her</p> <p>14:22:37 19 if I had the authority to share any data we collected</p> <p>14:22:43 20 with outside researchers and she said no and that Dr.</p> <p>14:22:48 21 McMahon had not contacted her with regard to using the</p> <p>14:22:51 22 data for any studies he was interested in doing.</p> <p>14:23:36 23 Q. Previously you testified that you contacted</p> <p>14:23:42 24 Dr. Li's assistant, Christine Lasalle, sometime in June</p> <p>14:23:49 25 of 2012; is that correct?</p>
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<p>14:23:51 1 A. Yes.</p> <p>14:23:51 2 Q. I will now give you what we're going to mark</p> <p>14:23:57 3 as Exhibit No. 83.</p> <p>14:24:08 4 (Whereupon Exhibit 83 was marked for identification.)</p> <p>14:24:08 5 BY MS. DONOSSO:</p> <p>14:24:09 6 Q. Do you recognize this E-mail? And I'll let</p> <p>14:24:12 7 you look at it because it's a thread as well.</p> <p>14:24:29 8 A. Yes.</p> <p>14:24:30 9 Q. Is it a true and correct copy of the E-mail</p> <p>14:24:35 10 exchange that you had with Ms. Lasalle?</p> <p>14:24:41 11 A. Yes.</p> <p>14:24:41 12 Q. And during this time, you -- this is a</p> <p>14:24:52 13 follow-up to the E-mail that I had shown you previously</p> <p>14:24:55 14 where you had began discussing the IRB issues with Ms.</p> <p>14:25:04 15 Lasalle. I'll draw your attention to PRD 9920 --</p> <p>14:25:12 16 A. Okay.</p> <p>14:25:12 17 Q. -- at the bottom. In August, on August 1st</p> <p>14:25:14 18 of 2012, you had an exchange with Ms. Lasalle where you</p> <p>14:25:20 19 say: "I'm anxious to resolve the IRB issues related to</p> <p>14:25:28 20 my CDC confidentiality agreement. I will forward that</p> <p>14:25:30 21 agreement to you." Do you see that?</p> <p>14:25:31 22 A. Yes.</p> <p>14:25:32 23 Q. Okay, and then Ms. Lasalle responds to you</p> <p>14:25:37 24 and she says: "My understanding is that Dr. McMahon</p> <p>14:25:41 25 wants to meet with you. I will follow up with him to</p>	<p>14:25:43 1 confirm that he gets back to you." Do you see that?</p> <p>14:25:46 2 A. Yes.</p> <p>14:25:46 3 Q. Okay, and then your response is: "The legal</p> <p>14:25:56 4 implications are huge for me." And you go on to say:</p> <p>14:26:00 5 "My request to Mr. McMahon had been twofold, one, to</p> <p>14:26:06 6 change the PI listed on IRB 00011805 from him to me as I</p> <p>14:26:15 7 am the PI on the grant and over all the data sharing</p> <p>14:26:18 8 agreements, and, two, to have the ability to choose my</p> <p>14:26:21 9 own research staff. My sense is he's still unwilling to</p> <p>14:26:26 10 do this or he would have made these changes by now."</p> <p>14:26:32 11 Now, which one is IRB 00011805? Is that the original IRB</p> <p>14:26:40 12 from 2003?</p> <p>14:26:42 13 A. Yes.</p> <p>14:26:42 14 Q. Okay. Why would he need to change the order</p> <p>14:26:51 15 of the IRB?</p> <p>14:26:56 16 A. Because on the IRB, he lists himself as --</p> <p>14:26:59 17 that he's receiving funding from the CDC to do a project</p> <p>14:27:05 18 which he had not.</p> <p>14:27:08 19 Q. But that's -- that's not what the E-mail</p> <p>14:27:12 20 says. The E-mail says to change the PI listed from him</p> <p>14:27:16 21 to me as I am the PI on the grant. So were you asking</p> <p>14:27:20 22 him to change the order since he was listed as the first</p> <p>14:27:24 23 on the PI and you as a co-PI?</p> <p>14:27:29 24 A. I'd been asking him that for years.</p> <p>14:27:32 25 Q. Why would he need to do that?</p>

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14:27:35	1 A. Because he didn't do the grant.	14:29:28	1 Q. Okay, but you do understand that he's been on
14:27:40	2 Q. But he's been working on this project from	14:29:44	2 the IRB from the beginning and he has made contributions
14:27:43	3 the very beginning; isn't that correct?	14:29:52	3 to the IRB?
14:27:45	4 A. Working in a very minimal sense.	14:29:53	4 A. Perhaps minimally in 2002 to -- I would say
14:27:52	5 Q. So that would mean that he has been on the	14:30:06	5 after 2005 he pretty much did nothing.
14:28:05	6 original PI from the beginning?	14:30:10	6 Q. Isn't he a member of the oversight committee?
14:28:08	7 A. He did -- in the original -- in 2002, McMahon	14:30:13	7 A. Correct.
14:28:14	8 helped me get into some data sources as I've previously	14:30:14	8 Q. Doesn't he go to all of those meetings as
14:28:20	9 mentioned. I think he looked at a total three records	14:30:18	9 part of the oversight committee?
14:28:28	10 and that was it.	14:30:20	10 A. The oversight committee had nothing to do
14:28:31	11 Q. So he is listed as the original PI on the	14:30:23	11 with reviewing anything related to grant research. That
14:28:36	12 original IRB?	14:30:26	12 went all through the CDC.
14:28:37	13 A. At the university because I wasn't at the	14:30:28	13 Q. There is a CDC component and then there is an
14:28:42	14 university.	14:30:32	14 oversight committee component?
14:28:45	15 Q. Okay.	14:30:34	15 A. Correct.
14:28:49	16 A. So I believed it was a misrepresentation that	14:30:34	16 Q. And everybody has to collaborate as part of
14:28:52	17 he was a PI on a grant that he had not received, nor was	14:30:38	17 the efforts for it to work?
14:28:56	18 he doing any work on the grant that was listed on the	14:30:39	18 A. For the CDC grant, the CDC grant had a
14:28:59	19 IRB.	14:30:44	19 different review process to use and utilize CDC data.
14:29:01	20 Q. So you don't believe that him involving	14:30:50	20 None of that went through the oversight committee.
14:29:06	21 people like Carmen Pingree, Eric Fombonne, and using his	14:30:54	21 Q. Okay, so, because it's your opinion that he
14:29:13	22 reputation to help publish articles and bring grants and	14:31:00	22 doesn't do as much work as you do, you felt that he
14:29:20	23 prestige to URADD is part of his work on the IRB?	14:31:03	23 should just be taken off as the order of the IRB
14:29:23	24 A. I saw that as less than one percent effort on	14:31:09	24 position?
14:29:26	25 the grant.	14:31:09	25 A. It was as well as him saying he didn't want
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14:31:14	1 to -- he wanted to share -- he wanted to contact families	14:33:56	1 wanted to link blood spots with registry data.
14:31:22	2 using the data I collected. He wanted to share	14:34:16	2 Q. Do you recall writing a memo regarding some
14:31:30	3 identifiable data with the Utah population database. He	14:34:21	3 of these concerns to Dr. Li sometime in August of 2012?
14:31:36	4 was not having Bilder or Bakian go through the oversight	14:34:28	4 A. I believe that specific -- I recall -- I
14:31:48	5 committee for approval and the Utah Department of Health,	14:34:36	5 don't recall. I recall contacting her. I know I asked
14:31:51	6 so it was multiple reasons and because I didn't want to	14:34:41	6 her about school data, trying to get clarification about
14:31:57	7 be around him.	14:34:46	7 school data. I was more trying to get clarification from
14:32:09	8 Q. Okay, and when did these concerns regarding	14:34:52	8 the health department because it was birth certificate
14:32:15	9 Dr. McMahon, when did you begin having these concerns	14:34:56	9 data on normal children, not just surveillance data.
14:32:18	10 regarding Dr. McMahon?	14:35:05	10 Q. When did you contact the health department?
14:32:20	11 A. Which ones?	14:35:07	11 A. When didn't I contact the health department?
14:32:21	12 Q. The one about you wanting to take him off the	14:35:20	12 MR. ROBINSON: I'm sorry, I didn't understand
14:32:26	13 original IRB.	14:35:22	13 that.
14:32:27	14 A. Around 2010, 2011.	14:35:22	14 THE WITNESS: So -- so my liaison with the
14:32:36	15 Q. Okay.	14:35:24	15 health department originally was George Delavan and then
14:32:37	16 A. I didn't want to take him off. I wanted to	14:35:29	16 he retired and then it switched to Harper Randall, so
14:32:40	17 reverse the order.	14:35:34	17 anything --
14:32:53	18 Q. So was it after Dr. Bakian was hired?	14:35:36	18 MR. ROBINSON: Well, the question was: When
14:32:58	19 A. Actually it was before Bakian was hired.	14:35:38	19 did you contact the health department with that concern?
14:33:09	20 Judith Miller had written a grant where she indicated she	14:35:40	20 MS. LEONARD: No, the question was: When did
14:33:14	21 wanted to contact families off birth certificate	14:35:45	21 you contact the health department? And her answer was:
14:33:20	22 information. He also was wanting to contact families off	14:35:47	22 When did I not contact the health department?
14:33:24	23 registry data. They were wanting to take maternal blood	14:35:50	23 THE WITNESS: So if there was any question
14:33:42	24 spots that you obtain during -- when a baby is born, they	14:35:52	24 about data collected through the -- by the health
14:33:49	25 do a heel cord stick, so there is DNA in the blood. They	14:35:55	25 department, I would seek clarification from them as to

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14:36:00	1	14:37:19	1
14:36:05	2	14:37:24	2
14:36:06	3	14:37:29	3
14:36:10	4	14:37:29	4
14:36:18	5	14:37:29	5
14:36:22	6	14:37:55	6
14:36:24	7	14:37:57	7
14:36:24	8	14:38:00	8
14:36:28	9	14:38:02	9
14:36:28	10	14:38:03	10
14:36:29	11	14:38:04	11
14:36:32	12	14:38:07	12
14:36:37	13	14:38:07	13
14:36:41	14	14:38:17	14
14:36:48	15	14:38:23	15
14:36:50	16	14:38:23	16
14:36:53	17	14:38:24	17
14:36:54	18	14:38:28	18
14:36:59	19	14:38:30	19
14:37:00	20	14:38:31	20
14:37:07	21	14:38:41	21
14:37:10	22	14:38:46	22
14:37:12	23	14:38:51	23
14:37:13	24	14:38:55	24
14:37:16	25	14:38:58	25
their position on that.		Health, so that we can have some order, okay. So let me	
MR. ROBINSON: Maybe I misunderstood the		see if I can help refresh your memory regarding this memo	
question. I thought the question was: When did you		to Dean Li.	
contact the Department of Health about your concerns that		(Whereupon Exhibit 84 was marked for identification.)	
you had expressed to Dr. Li.		BY MS. DONOSSO:	
MS. LEONARD: The question was not that		Q. Do you recall this confidential memo?	
specific.		A. Yes.	
MR. ROBINSON: Oh, maybe we need to read the		Q. Okay. Is it a true and correct copy of the	
question.		memo that you sent --	
BY MS. DONOSSO:		A. Yes.	
Q. So let me first finish my original question		Q. -- to Dean Li?	
regarding Dr. Li. Did you -- do you recall writing a		A. Yes.	
confidential memo to Dr. Li when you were seeking		Q. It's dated August 16th of 2012. It	
assistance regarding your request to change the orders of		references a meeting you had on July 5th, 2012, with Dean	
the PI on the IRB?		Li?	
A. Which Li? Oh, I'm confused. So Dean Li?		A. Yes.	
Q. Yes, Dean Li.		Q. And in it, it outlines some concerns and some	
A. So I first talked to Jeff Botkin in 2011.		proposed solutions you have to your concerns?	
Q. Right.		A. Correct.	
A. And then I talked to him in -- I sent him		Q. So you, again, reference the original IRB	
some documents, it was either the end of July or the		00011805 and you mentioned that historically Dr. McMahon	
first part of August. It was somewhere between June and		has represented himself as the original PI and that you	
August.		would like that changed, that you want to be the lead PI	
Q. So let's focus first on Dean Li and then		on the original IRB; is that correct?	
we'll get to Jeff and then we'll get to the Department of		A. Correct.	
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14:38:59	1	14:40:44	1
14:39:07	2	14:40:49	2
14:39:12	3	14:40:53	3
14:39:18	4	14:40:57	4
14:39:23	5	14:40:58	5
14:39:24	6	14:41:01	6
14:39:26	7	14:41:06	7
14:39:29	8	14:41:10	8
14:39:35	9	14:41:12	9
14:39:43	10	14:41:19	10
14:39:48	11	14:41:23	11
14:39:50	12	14:41:27	12
14:39:53	13	14:41:28	13
14:39:58	14	14:41:35	14
14:39:58	15	14:41:44	15
14:40:00	16	14:41:49	16
14:40:08	17	14:42:00	17
14:40:09	18	14:42:01	18
14:40:14	19	14:42:03	19
14:40:18	20	14:42:08	20
14:40:19	21	14:42:14	21
14:40:22	22	14:42:21	22
14:40:27	23	14:42:26	23
14:40:32	24	14:42:30	24
14:40:41	25	14:42:35	25
Q. Okay, your second concern is that Dr. Bakian,		department would have that they may be able to provide to	
Dr. Bilder and Dr. McMahon have amended the IRB, the		you as well.	
original IRB, that they did so in June 2012, to conduct		Q. And you have not provided those to us in	
some research with identifiable surveillance data?		discovery?	
A. Yes.		A. I am not sure.	
Q. And you believe that is in violation of their		Q. And you believe that you've provided to us	
confidentiality agreements and you attached that in the		the contract with the Office of Vital Records?	
back and you're concerned about that as well because you		A. I believe so.	
signed some contracts with the Utah Department of Health		Q. Okay. Your solution to that concern is that	
Office of Vital Records. Where is that contract with the		you made a report, a report was made with the Office of	
Office of Vital Records? Are those the documents that		Privacy. That's the report you made with Jeff Botkin; is	
we've reviewed, that we just spent a long time reviewing		that correct?	
today or are those different than the ones we've reviewed		A. No, in 2011, I talked to him about changing	
today?		the order of the PI and IRB 1111805. I attempted to meet	
A. We've not reviewed that contract specifically		with Dean Li and Bill McMahon on the 16th to get	
today. There are so many documents. I believe it's in		clarification on could I share identifiable data with	
there but I'm not sure.		non-grant staff.	
Q. So do you believe that you produced in		Q. Okay.	
discovery this contract with the Office of Vital Records?		A. There was also another issue, financial, that	
A. I hope so.		had to do with double dipping, so Bakian had already	
Q. Okay, so you believed that we've now reviewed		received funds to do this study as part of the CDC grant,	
all of the contracts you had with the State Office of		so she was taking a research project in progress with the	
Education, that's what we've now marked as 82 I believe?		CDC researchers and taking it to a different group of	
A. There were some other -- you know, there are		researchers and she had already been paid to do it, so it	
some other letters of support, contracts that the health		created a double dipping situation for me because I'd	

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14:42:41 1 already paid her to do it and she was duplicating that
14:42:44 2 project with a different group of researchers and would
14:42:48 3 be paid separately under a different group of people and
14:42:52 4 she had not followed her confidentiality agreement with
14:42:55 5 the CDC as part of that effort, research effort.
14:43:03 6 Q. Okay. Now, you go on to say that if there
14:43:07 7 was any outside copies of the data that this be returned
14:43:11 8 to you and you wanted Dr. Bakian removed from any grant
14:43:18 9 or URADD related projects and you wanted Dr. McMahon to
14:43:22 10 allow you to recruit or hire basically your own
14:43:26 11 personnel; is that correct?
14:43:27 12 A. So, in my previous meeting with Dr. Li, he
14:43:33 13 had informed me that as the PI of the CDC grant, I had
14:43:38 14 the authority to choose my own staff, and as far as that
14:43:44 15 I gave Bakian a choice, did she want to -- which group of
14:43:52 16 researchers did she want to work with on this project and
14:43:55 17 she didn't get back to me.
14:43:56 18 Q. Okay, so let's talk about your meeting with
14:44:37 19 Jeff Botkin.
14:45:33 20 (Whereupon Exhibit 85 was marked for identification.)
14:45:33 21 BY MS. DONOSSO:
14:45:55 22 Q. Do you recognize this E-mail?
14:45:57 23 A. Yes.
14:45:58 24 Q. It's dated April 14th, 2011, at least the
14:46:08 25 bottom portion of it, and it's from you to Jeff Botkin

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14:46:13 1 and its subject is IRB 0001185.
14:46:19 2 MR. ROBINSON: 805.
14:46:24 3 BY MS. DONOSSO:
14:46:24 4 Q. 805, sorry. Thank you. It's states:
14:46:28 5 "Thanks for talking with me by phone last week." So I'm
14:46:31 6 assuming that you had a meeting with him the previous
14:46:34 7 week. Was the first time that you spoke with Jeff
14:46:40 8 Botkin -- is it safe to say that the first time you spoke
14:46:42 9 with Jeff Botkin was sometime in maybe the first week of
14:46:46 10 2011 regarding IRB 00011805?
14:46:53 11 A. I don't believe I met with him prior to --
14:46:57 12 talked with him prior to -- I may have talked to him in
14:47:01 13 2010, but when the IRB renewal came up again, I contacted
14:47:09 14 him in April of 2011.
14:47:12 15 Q. Okay, and was your first contact with him by
14:47:17 16 phone and then you followed up with this E-mail?
14:47:20 17 A. Yes.
14:47:20 18 Q. Okay, and then the E-mail goes on to say:
14:47:29 19 "The IRB for the study was conducted under 00011805. Dr.
14:47:36 20 McMahon listed as the primary investigator with me listed
14:47:42 21 co-investigator." And then you mentioned it was up for
14:47:43 22 renewal and you say: "Several weeks ago I sent an E-mail
14:47:46 23 to Dr. McMahon asking him if we could switch the order on
14:47:48 24 the IRB with me listed first and Dr. McMahon denied my
14:47:53 25 request. Do you have any advice for me? Would it be

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14:47:59 1 possible for me to submit a separate IRB?" What advice
14:48:04 2 did he provide to you?
14:48:06 3 A. He denied that McMahon would do what I had
14:48:14 4 suggested, that he told me I had the ability to recreate
14:48:17 5 my own IRB for my grant, which I did.
14:48:22 6 Q. Did he give you any other type of advice?
14:48:27 7 Did he tell you that you had the option of contacting
14:48:32 8 anybody else?
14:48:33 9 A. No, nor did he disclose his relationship with
14:48:36 10 McMahon.
14:48:37 11 Q. What relationship?
14:48:39 12 A. He had a conflict of interest.
14:48:42 13 Q. And that's not my question. What
14:48:45 14 relationship did he have with him?
14:48:46 15 A. They were coauthors on manuscripts and a
14:48:51 16 book.
14:48:51 17 Q. Okay. Did he -- he or anybody in his office
14:49:01 18 inform you that they didn't think this was an IRB issue?
14:49:07 19 A. The IRB thought it was a research compliance
14:49:13 20 integrity issue and referred me to Botkin.
14:49:17 21 Q. Okay, so let me give you what we'll mark --
14:49:35 22 how shortly after the April 14th E-mail did they inform
14:49:41 23 you it was not an IRB issue?
14:49:43 24 A. It was at the same time. There are some
14:49:46 25 E-mails between myself and a Maureen Brinkman.

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14:50:05 1 (Whereupon Exhibit 86 was marked for identification.)
14:50:06 2 BY MS. DONOSSO:
14:50:06 3 Q. Do you recognize this E-mail?
14:50:13 4 A. Yes.
14:50:14 5 Q. Is this a true and correct copy of the E-mail
14:50:16 6 that Ms. Maureen Brinkman sent you on or about April
14:50:22 7 26th, 2011?
14:50:23 8 A. Yes.
14:50:23 9 Q. Okay, and through this E-mail she said she
14:50:27 10 did not believe that this was an IRB issue; is that
14:50:30 11 correct?
14:50:31 12 A. Yes.
14:50:32 13 Q. So other than that phone conversation that
14:50:39 14 you had with him and this E-mail that you sent to Dr.
14:50:43 15 Botkin and this follow-up E-mail with Ms. Brinkman, did
14:50:48 16 you, at this time in April of 2011, actually file a
14:50:53 17 formal complaint with Mr. Botkin regarding the IRB issue?
14:51:02 18 A. I thought what I had sent was a formal
14:51:06 19 complaint. He didn't direct me otherwise.
14:51:11 20 Q. So he informed -- but you didn't fill out a
14:51:14 21 form, you just asked for advice. You said I want a good
14:51:22 22 relationship, do you have any advice for me, but did you
14:51:26 23 actually --
14:51:28 24 A. So what happened is I also talked to Richard
14:51:34 25 Sperry, I can't remember his official title, about it and

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14:51:41 1 he indicated he would assist me with filing a formal
14:51:45 2 complaint.
14:51:46 3 Q. But that would be with Mr. Sperry's office.
14:51:48 4 In April of 2011, did you -- other than sending this
14:51:52 5 E-mail seeking advice, did you file a formal complaint
14:51:56 6 with Mr. Botkin at this time in April of 2011?
14:51:59 7 A. I thought my complaint was very clear. He
14:52:03 8 chose not to investigate.
14:52:05 9 MR. ROBINSON: That doesn't answer the
14:52:06 10 question.
14:52:07 11 BY MS. DONOSSO:
14:52:07 12 Q. That doesn't answer my question. Did you
14:52:07 13 file an actual like a complaint form?
14:52:10 14 A. To me this was a complaint.
14:52:12 15 Q. Okay.
14:52:13 16 MR. ROBINSON: So the only complaint is the
14:52:16 17 E-mail, is that correct, that you filed with --
14:52:18 18 THE WITNESS: And I talked to him and I
14:52:21 19 talked with IRB.
14:52:22 20 MR. ROBINSON: We're talking about just Mr.
14:52:24 21 Botkin right now, just so the record is clear.
14:52:26 22 THE WITNESS: Uh-huh.
14:52:27 23 MR. ROBINSON: The only communication you had
14:52:29 24 with Mr. Botkin was the phone call and this E-mail that
14:52:33 25 was marked as Exhibit 85, no other reports with Mr.

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14:52:37 1 Botkin; correct?
14:52:39 2 THE WITNESS: At that time.
14:52:40 3 MR. ROBINSON: At that time; correct?
14:52:43 4 THE WITNESS: At that time.
14:52:44 5 MR. ROBINSON: Okay. Thank you.
14:52:44 6 BY MS. DONOSSO:
14:52:46 7 Q. Okay. Now, let's go back and talk about the
14:52:56 8 financial issues with Amanda. You actually asked for a
14:53:20 9 financial investigation to be conducted based on your
14:53:25 10 concerns, didn't you?
14:53:26 11 A. No, I was surprised they did an
14:53:33 12 investigation.
14:53:34 13 Q. Well, you accused your colleague of double
14:53:38 14 dipping. Don't you think that that's a serious
14:53:41 15 allegation?
14:53:41 16 A. I was trying to figure out my financial
14:53:43 17 report to the CDC in terms of time spent with Bakian, and
14:53:54 18 I was overdrawn on some accounts, so I was trying to
14:53:59 19 figure out why.
14:54:04 20 Q. Isn't it common though that sometimes the way
14:54:07 21 grants work, depending on the cycle, sometimes it is not
14:54:12 22 uncommon to be overdrawn especially where you're working
14:54:15 23 on various different grants?
14:54:17 24 A. It wasn't common for me.
14:54:18 25 Q. Okay. Did you ever receive a report on the

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14:54:27 1 results of the investigation regarding the financial
14:54:31 2 situation with Amanda Bakian?
14:54:34 3 A. I remember getting a vague response saying
14:54:39 4 that -- that the PARs been readjusted or done
14:54:54 5 differently, so my concern was he had -- McMahon had
14:54:57 6 committed me to pay 80 percent of her salary but I could
14:55:02 7 not account for that time, nor could I account that the
14:55:09 8 work related to what she was being paid for was being
14:55:15 9 done.
14:55:31 10 (Whereupon Exhibit 87 was marked for identification.)
14:55:32 11 BY MS. DONOSSO:
14:55:32 12 Q. I'll give you an opportunity to review what
14:55:35 13 has been marked as Exhibit 87. Do you recognize this
14:56:05 14 document?
14:56:05 15 A. Yes.
14:56:05 16 Q. Okay, and it was a financial audit that was
14:56:18 17 conducted. It was completed in 2012. You were
14:56:29 18 interviewed as part of this financial audit; isn't that
14:56:33 19 correct?
14:56:34 20 A. Only briefly on the phone.
14:56:37 21 Q. Okay.
14:56:38 22 A. Basically what I was asking for was if they
14:56:40 23 could give me an accounting of the hours charged to which
14:56:46 24 activity report because the balances weren't matching.
14:56:54 25 Q. Well, as part of the investigation, they did

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14:56:57 1 review the PAR forms for Dr. Bakian for all of 2012
14:57:05 2 because there was a dispute obviously between you and Dr.
14:57:10 3 McMahon regarding how Dr. Bakian was being paid, and
14:57:16 4 based on the review of the PARs, Marjorie Goodrich, who
14:57:23 5 was the audit manager, found that none of Dr. Bakian's
14:57:28 6 efforts was being charged to your grant, that there was a
14:57:32 7 combination of payment being charged both to Dr.
14:57:41 8 McMahon's grants and department activities around, so
14:57:42 9 they concluded that there was no misappropriation of
14:57:47 10 funds. Do you see that at the conclusion on the second
14:57:53 11 page?
14:57:55 12 A. I see what they wrote there, yes.
14:57:58 13 Q. Okay. The assistant vice president of
14:58:05 14 auditing was cc'd on this audit. Obviously that is not
14:58:11 15 something that is taken lightly at the university. You
14:58:20 16 obviously have a copy of this since this was your
14:58:23 17 production. Were you satisfied with the results?
14:58:26 18 A. No.
14:58:30 19 Q. Why not?
14:58:31 20 A. Because funding for my grant was being
14:58:35 21 intermingled with other funding with the finance
14:58:39 22 department, so they looked like they were McMahon's
14:58:43 23 dollars and not my dollars.
14:58:44 24 Q. And do you have proof of that?
14:58:46 25 A. Yes.

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14:58:47	1	Q. And was that provided to us during discovery	15:01:55	1	recall preparing what has been previously marked as
14:58:51	2	or is that just your opinion?	15:02:01	2	Exhibit No. 37?
14:58:54	3	A. You provided us a document of a financial	15:02:02	3	A. Yes.
14:58:56	4	report prepared by Dan Hogge from 2011.	15:02:02	4	Q. Do you recognize this document?
14:59:02	5	Q. Okay.	15:02:06	5	A. Yes.
14:59:04	6	A. And McMahon was listing himself as the	15:02:06	6	Q. What is it?
14:59:08	7	financial person for grants that I had received and	15:02:08	7	A. We were required to submit our activities
14:59:14	8	another faculty member had received.	15:02:13	8	from the previous year.
14:59:16	9	Q. And you believed that that's evidence of	15:02:15	9	Q. And did you prepare this document?
14:59:19	10	misappropriation of funds?	15:02:19	10	A. Yes.
14:59:21	11	A. What I'm saying is I don't know because I	15:02:19	11	Q. Okay, and then did you submit it to someone
14:59:24	12	didn't see her PARs and I was supposed to be supervising	15:02:22	12	in anticipation of your interview on August 17th?
14:59:30	13	her, so I don't know how the money was moved around. I	15:02:26	13	A. Yes.
14:59:37	14	don't know.	15:02:27	14	Q. And who did you submit it to?
14:59:37	15	Q. Okay. Do you recall meeting with Dr. McMahon	15:02:29	15	A. Barbara Young.
14:59:46	16	and Dr. Macintosh in August 2012 as part of your annual	15:02:31	16	Q. Okay, and let's go through it a little bit,
14:59:51	17	faculty evaluations?	15:02:36	17	so here it says -- it goes through and I guess it says
14:59:52	18	A. Yes.	15:02:41	18	that you -- it talks about your academic achievements for
14:59:53	19	Q. This has been previously marked as	15:02:47	19	the year. It says that you had a couple of lectures and
15:01:04	20	Exhibit 38. It was kind of the calendar of the faculty	15:02:49	20	it lists your active grants; is that correct?
15:01:06	21	reviews. You may not recognize this document but maybe	15:02:53	21	A. Yes.
15:01:11	22	you do. Do you recall having your faculty review on	15:02:54	22	Q. And so it talks about -- lists you as the
15:01:17	23	August 17th at around 1:30 p.m.?	15:03:00	23	principal investigator for CDC, Centers for Disease
15:01:20	24	A. Yes.	15:03:05	24	Control, and lists you as the principal investigator, and
15:01:20	25	Q. And in anticipation of that meeting, do you	15:03:08	25	then it also lists you for URADD, Utah Registry of Autism
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15:03:15	1	and Developmental Disabilities, and it also lists you as	15:04:51	1	just met the year before and gone through that outline of
15:03:18	2	the principal investigator and then it lists an active	15:04:55	2	expectations?
15:03:22	3	contract for URADD as well and then it goes through and	15:04:56	3	A. Correct.
15:03:28	4	lists one, two, three, three peer review journal	15:04:56	4	Q. Did you guys talk about that outline of
15:03:37	5	articles; is that correct? One, two -- yeah, three.	15:04:59	5	expectations and talk about any progress that had been
15:03:45	6	MR. ROBINSON: Is that correct?	15:05:02	6	made?
15:03:46	7	BY MS. DONOSSO:	15:05:02	7	A. He did not ask me about the executive
15:03:46	8	Q. Is that correct?	15:05:07	8	coaching. The only question he asked -- I indicated that
15:03:47	9	A. One of them has been retracted.	15:05:10	9	I had added Eric Fombonne to the study that he required
15:03:50	10	Q. Oh, which one?	15:05:16	10	me to add him to.
15:03:50	11	A. Because of errors made by Bakian, 2011.	15:05:16	11	Q. Okay.
15:03:59	12	Q. There are two that say 2011.	15:05:19	12	A. He asked me about Deb Bilder and helping Deb
15:04:03	13	A. The first one.	15:05:24	13	Bilder and I said I wasn't aware of any studies Deb
15:04:04	14	Q. The first one, okay, and then it goes through	15:05:30	14	Bilder was doing using URADD data. This, that's it.
15:04:16	15	and talks about the goals for the academic year beginning	15:05:36	15	Q. Well, what else did you talk about during
15:04:20	16	on July 1st, so is this what you used to talk about	15:05:37	16	that half hour?
15:04:26	17	during your meeting with Dr. Macintosh and Dr. McMahon	15:05:38	17	A. These accomplishments, the grant, what we
15:04:31	18	during your meeting on August 17th?	15:05:42	18	were working on, who we'd collaborated with.
15:04:33	19	A. Yes.	15:05:47	19	Q. Did you talk about the collegiality issues
15:04:33	20	Q. How long was your meeting that day on	15:05:50	20	and the need to --
15:04:37	21	August 17th?	15:05:51	21	A. The only thing was mentioned at all was Deb
15:04:37	22	A. I don't recall. Probably at least half an	15:05:56	22	Bilder and he seemed unaware that I had no idea what he
15:04:43	23	hour, 45 minutes.	15:06:07	23	was talking about.
15:04:44	24	Q. Okay. During that meeting -- I mean, you had	15:06:10	24	Q. What do you mean that he was unaware that you
15:04:48	25	met the year before. You had this outline, but you also	15:06:13	25	didn't understand what he was talking about during that

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<p>15:06:15 1 meeting?</p> <p>15:06:15 2 A. He asked me if I was helping Deb Bilder and I</p> <p>15:06:19 3 said I thought Deb Bilder had all the data she needed. I</p> <p>15:06:23 4 wasn't aware of any help that she needed.</p> <p>15:06:27 5 Q. Okay. During that meeting, did you make him</p> <p>15:06:30 6 aware that you had already begun conversations about</p> <p>15:06:35 7 transferring to another department?</p> <p>15:06:36 8 A. He knew that when I had met with Dean Li.</p> <p>15:06:42 9 We'd talked about it.</p> <p>15:06:43 10 Q. So you'd met with Dean Li the previous month.</p> <p>15:06:47 11 How would he have been aware of that?</p> <p>15:06:49 12 A. How who would be aware of?</p> <p>15:06:49 13 Q. How would --</p> <p>15:06:52 14 A. We'd met the -- was it the day before? It</p> <p>15:06:53 15 was right about the same time. He knew I wanted to leave</p> <p>15:06:57 16 when we met with Dean Li.</p> <p>15:06:59 17 Q. Was he present during the meeting with Dean</p> <p>15:07:02 18 Li?</p> <p>15:07:02 19 A. Yes. Yes.</p> <p>15:07:02 20 Q. I thought you and Dean Li had met alone.</p> <p>15:07:06 21 A. The first meeting was alone. The second</p> <p>15:07:10 22 meeting was with McMahon.</p> <p>15:07:12 23 Q. Okay, and that happened before this meeting</p> <p>15:07:14 24 on August 17th?</p> <p>15:07:16 25 A. Right, and I had -- after the meeting with</p>	<p>15:07:22 1 Dean Li and McMahon, I wasn't able to resolve the privacy</p> <p>15:07:27 2 issues, so we talked about that I needed clarification</p> <p>15:07:32 3 from them regarding the agreements and what data could be</p> <p>15:07:35 4 shared and couldn't be shared.</p> <p>15:07:37 5 Q. Okay.</p> <p>15:07:38 6 A. So it was the day before.</p> <p>15:07:41 7 Q. Okay, and did you share any concerns that you</p> <p>15:08:06 8 had or anything else with him during this annual review</p> <p>15:08:14 9 meeting?</p> <p>15:08:14 10 A. I'd shared them the day before. At the same</p> <p>15:08:18 11 time -- was it the 16th? What was the date of my meeting</p> <p>15:08:21 12 with Dean Li? I think it was the day before, wasn't it?</p> <p>15:08:25 13 MR. ROBINSON: Well, the confidential memo</p> <p>15:08:27 14 was marked as Exhibit 84.</p> <p>15:08:29 15 BY MS. DONOSSO:</p> <p>15:08:29 16 Q. Was dated August 16th.</p> <p>15:08:30 17 A. So Dean Li and McMahon and I met on</p> <p>15:08:34 18 August 16th.</p> <p>15:08:35 19 MR. ROBINSON: After you provided the</p> <p>15:08:38 20 confidential memo to Dean Li or before?</p> <p>15:08:39 21 THE WITNESS: Yes, I had asked to be able to</p> <p>15:08:42 22 talk to him about the IRB issues and resolve that to find</p> <p>15:08:45 23 out which data I could share, which data I couldn't, IRB</p> <p>15:08:52 24 issues, and they didn't want to talk about it, and I just</p> <p>15:08:58 25 said, before we move ahead, I need to get clarification</p>
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<p>15:09:02 1 because I need to know where the data is before I leave.</p> <p>15:09:02 2 BY MS. DONOSSO:</p> <p>15:09:13 3 Q. By data, you mean which one of the databases</p> <p>15:09:15 4 you could take with you to the department?</p> <p>15:09:16 5 A. No, where the data had went. I had lost the</p> <p>15:09:21 6 chain of custody of the data. So the IRB that Bilder,</p> <p>15:09:31 7 McMahon and Bakian submitted indicated that they were</p> <p>15:09:36 8 using identifiable data from my CDC grants. I didn't</p> <p>15:09:42 9 have an IRB from the health department for Bakian and</p> <p>15:09:48 10 Bilder to access identifiable data. I had nothing from</p> <p>15:09:52 11 the school district saying they could use that data, so I</p> <p>15:09:56 12 had lost the chain of custody of my data. Had I just</p> <p>15:10:01 13 gotten anything from the health department or State</p> <p>15:10:05 14 Office of Education or data sources saying they could</p> <p>15:10:06 15 have the data, I would've gladly given it to them, but</p> <p>15:10:11 16 they didn't go through the process of the health</p> <p>15:10:13 17 department or contact the State Office of Education.</p> <p>15:10:18 18 Q. Okay.</p> <p>15:10:29 19 A. So my hope was that they would tell me where</p> <p>15:10:32 20 the data was and that they would clarify who could have</p> <p>15:10:40 21 access to identifiable data.</p> <p>15:10:46 22 Q. So your concern was that they had created an</p> <p>15:11:01 23 amendment to the IRB and they were using that data under</p> <p>15:11:04 24 their own research projects?</p> <p>15:11:06 25 A. So when the IRB that ends in 05 came up for</p>	<p>15:11:15 1 renewal, they indicated that I had given them</p> <p>15:11:21 2 identifiable data that they were using to do research,</p> <p>15:11:31 3 including birth certificate data and grant data from</p> <p>15:11:37 4 school and health sources. They were also indicating on</p> <p>15:11:41 5 that IRB that they were receiving funding from the CDC,</p> <p>15:11:47 6 and because he was not willing to switch the order on the</p> <p>15:11:54 7 grant, I did my own IRB for my own grant efforts, which</p> <p>15:12:01 8 was paid for by the CDC.</p> <p>15:12:09 9 Also in discovery, there is an IRB that</p> <p>15:12:13 10 Bilder, Bakian and McMahon created saying they were the</p> <p>15:12:18 11 PIs on the CDC grant and receiving funding from the CDC.</p> <p>15:12:26 12 Q. Right. Let's look at that. So as a result</p> <p>15:13:05 13 of your concerns, you actually ended up filing two</p> <p>15:13:09 14 separate complaints with the IRB office; isn't that</p> <p>15:13:14 15 correct?</p> <p>15:13:15 16 A. I sought clarification on multiple issues</p> <p>15:13:21 17 with the IRB from 2011 until I left.</p> <p>15:13:25 18 Q. Okay, so let's begin with Complaint No. 1.</p> <p>15:13:52 19 So let's start with the Botkin one, and then we'll work</p> <p>15:13:58 20 our way through the John Stillman ones. How is that? So</p> <p>15:14:03 21 we're on Exhibit 88?</p> <p>15:14:25 22 COURT REPORTER: Yes.</p> <p>15:14:25 23 (Whereupon Exhibit 88 was marked for identification.)</p> <p>15:14:26 24 BY MS. DONOSSO:</p> <p>15:14:31 25 Q. So do you recognize this document?</p>

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<p>15:14:34 1 A. Yes.</p> <p>15:14:35 2 Q. So this is a summary of the former complaint</p> <p>15:14:46 3 that you filled with Jeff Botkin on November 30th, 2012,</p> <p>15:15:10 4 and it states -- it references the original IRB 00011805</p> <p>15:15:23 5 and it goes on to say that Bill McMahon modified the</p> <p>15:15:28 6 original IRB in June of 2012 indicating his intent to use</p> <p>15:15:33 7 identifiable school and health data, i.e., maternal birth</p> <p>15:15:41 8 addresses, as you have previously testified, obtained</p> <p>15:15:44 9 through grant and contract activities, as you've</p> <p>15:15:48 10 previously testified, this was your complaint, in this</p> <p>15:15:50 11 IRB Dr. McMahon suggests that he's authorized to use this</p> <p>15:15:52 12 data as he is a PI on the CDC Autism Surveillance grant,</p> <p>15:15:57 13 for, which I am the PI, and implies that he has approval</p> <p>15:15:59 14 to use identifiable school data, and then you go on to</p> <p>15:16:04 15 say: "To my knowledge, Dr. McMahon has never had a</p> <p>15:16:07 16 cooperative agreement with the CDC or a contractual</p> <p>15:16:11 17 agreement with education." And by education, I'm</p> <p>15:16:16 18 assuming you mean the Utah State Office of Education as</p> <p>15:16:19 19 well as maybe even broader, the Jordan School District,</p> <p>15:16:20 20 etc., etc.; is that correct?</p> <p>15:16:21 21 A. Yes, you know, as required by local education</p> <p>15:16:26 22 authorities.</p> <p>15:16:26 23 Q. Okay. Then you also go on to say: "Dr.</p> <p>15:16:30 24 McMahon has signed a nondisclosure form in my grant</p> <p>15:16:34 25 activities and has never had direct access to</p>	<p>15:16:37 1 identifiable data." You go on to say: "Based on the</p> <p>15:16:43 2 contents of Dr. McMahon's IRB, I have reason to believe</p> <p>15:16:47 3 that Dr. Amanda Bakian has copied my identifiable</p> <p>15:16:51 4 research files without my knowledge, also in violation of</p> <p>15:16:58 5 signed confidentiality and security agreements." And</p> <p>15:17:07 6 then you go on to say that Dr. McMahon abruptly stopped</p> <p>15:17:12 7 your HR recruitment efforts and so you go on to explain</p> <p>15:17:17 8 that you've sought the assistance of the privacy office</p> <p>15:17:21 9 and Dean Li and the IRB. So this is the complaint that</p> <p>15:17:28 10 you filed with Jeffrey Botkin on November 30th, 2012. Is</p> <p>15:17:35 11 that an accurate summary?</p> <p>15:17:36 12 A. Yes.</p> <p>15:17:37 13 Q. Let me now show what was sent to you, an</p> <p>15:18:38 14 E-mail.</p> <p>15:18:54 15 (Whereupon Exhibit 89 was marked for identification.)</p> <p>15:18:54 16 BY MS. DONOSSO:</p> <p>15:19:00 17 Q. Do you recognize this document?</p> <p>15:19:01 18 A. Yes.</p> <p>15:19:02 19 Q. Is it an E-mail from Jeff Botkin to you dated</p> <p>15:19:10 20 December -- and I'm focusing on the second paragraph,</p> <p>15:19:14 21 December 2nd, 2012.</p> <p>15:19:15 22 A. Yes.</p> <p>15:19:16 23 Q. And it references I guess a phone call he had</p> <p>15:19:21 24 with you the previous week I'm assuming and it says: "I</p> <p>15:19:26 25 have reviewed the information you provided in your</p>
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<p>15:19:29 1 E-mail. It appears that both the privacy office and the</p> <p>15:19:32 2 IRB have evaluated your concerns regarding HIPAA and</p> <p>15:19:39 3 HITECH and have found no violations. It is evident that</p> <p>15:19:43 4 Dr. McMahon is a co-signer on the CDC privacy agreement,</p> <p>15:19:48 5 so this indicates to me, as determined by the privacy</p> <p>15:19:51 6 office, that Dr. McMahon is approved for access to this</p> <p>15:19:55 7 data. The other questions are whether FERPA violations</p> <p>15:20:00 8 have occurred or whether there have been inappropriate</p> <p>15:20:04 9 access to files in your office. I will check with Robert</p> <p>15:20:09 10 Payne." Etc. Etc. And then he goes on to say: "I</p> <p>15:20:12 11 suspect the conclusion will be the same if Dr. McMahon is</p> <p>15:20:14 12 also a co-signer on agreements regarding access to</p> <p>15:20:18 13 education data. I will forward this to general counsel</p> <p>15:20:22 14 and see if I can get back to you."</p> <p>15:20:28 15 And then at the top you did send him a</p> <p>15:20:31 16 response telling him that you believed that the</p> <p>15:20:34 17 information is incorrect. Do you recall getting this</p> <p>15:20:40 18 response from Jeff Botkin in December of 2012?</p> <p>15:20:43 19 A. Yes.</p> <p>15:20:44 20 Q. What did you do after he told you that in his</p> <p>15:20:57 21 opinion there were no violations, no privacy violations?</p> <p>15:21:05 22 A. So that the letter I received from the</p> <p>15:21:08 23 privacy office said they didn't look into FERPA issues,</p> <p>15:21:23 24 so, and he was no longer on the grant and I still didn't</p> <p>15:21:39 25 know where the data was, so we met with the health</p>	<p>15:21:47 1 department on December 10th, 2012, and the health</p> <p>15:21:58 2 department confronted him, McMahon, about bypassing the</p> <p>15:22:04 3 oversight committee process. I asked Rich Harwood, who</p> <p>15:22:04 4 was a bureau director, I believe he was a bureau</p> <p>15:22:22 5 director, if he knew where the data was, if he could just</p> <p>15:22:27 6 tell me where the health department data was, and he said</p> <p>15:22:28 7 I have no idea, the health department didn't set up</p> <p>15:22:32 8 contracts appropriately.</p> <p>15:22:35 9 MR. ROBINSON: Did or did not?</p> <p>15:22:36 10 THE WITNESS: Did not.</p> <p>15:22:38 11 MR. ROBINSON: The health department did not</p> <p>15:22:41 12 do that? That's yes?</p> <p>15:22:43 13 THE WITNESS: Yes. And I indicated to him</p> <p>15:22:48 14 that if that -- and Harper Randall indicated she had no</p> <p>15:22:54 15 idea who had access to URADD data, even though she was to</p> <p>15:22:59 16 approve oversight committee approvals, so given the fact</p> <p>15:23:07 17 that I didn't know where the data was, the privacy office</p> <p>15:23:11 18 had not decided on the FERPA issue, Robert Payne hadn't</p> <p>15:23:20 19 gotten back to me, the health department didn't know</p> <p>15:23:23 20 where the data was, I contacted state IT person to let</p> <p>15:23:32 21 them know that I didn't know where the data was, the</p> <p>15:23:37 22 state IT person brought with him Ryan Van Fleet, who was</p> <p>15:23:43 23 with the public safety office, and --</p> <p>15:23:43 24 BY MS. DONOSSO:</p> <p>15:23:53 25 Q. I think you're confusing the issue. You seem</p>

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<p>15:23:56 1 to keep alleging that the data was lost. My</p> <p>15:23:59 2 understanding was that the URADD database was always</p> <p>15:24:02 3 housed in a server at the University. Am I mistaken?</p> <p>15:24:06 4 A. It was housed on a secured server that only</p> <p>15:24:09 5 authorized data users could access.</p> <p>15:24:12 6 Q. So why do you keep referring to it as being</p> <p>15:24:16 7 lost?</p> <p>15:24:16 8 A. Because my understanding was that from my</p> <p>15:24:20 9 mentor that Bakian had copied it from the secured site</p> <p>15:24:25 10 and put it on her own computer and was sharing it, which</p> <p>15:24:29 11 was consistent with the testimony that Bilder gave, and I</p> <p>15:24:35 12 had no agreements from any of the sources that gave me</p> <p>15:24:41 13 permission to share that data with them.</p> <p>15:24:44 14 Q. Bilder also testified that it wasn't being</p> <p>15:24:48 15 shared. It was only being used in order to continue to</p> <p>15:24:52 16 do the work related to the grants.</p> <p>15:24:55 17 A. She wasn't on the grant, so when they took</p> <p>15:24:59 18 it, they weren't on the grant.</p> <p>15:25:03 19 Q. I guess there's a dispute of fact on that</p> <p>15:25:07 20 issue, but, anyway, so, I mean, so the data -- I mean,</p> <p>15:25:12 21 the data was always on the University of Utah's server.</p> <p>15:25:16 22 It was never lost; is that correct?</p> <p>15:25:18 23 A. I don't know who had the data, so the</p> <p>15:25:22 24 question was where was the data and non-authorized users</p> <p>15:25:28 25 had taken the data. That was the question. So I didn't</p>	<p>15:25:31 1 know where the data was.</p> <p>15:25:33 2 Q. Okay, so --</p> <p>15:25:36 3 MR. ROBINSON: Can we just define the data?</p> <p>15:25:38 4 Are we talking about all the data on the URADD database?</p> <p>15:25:44 5 THE WITNESS: I don't know what they took.</p> <p>15:25:45 6 MR. ROBINSON: You don't know if they took</p> <p>15:25:47 7 anything?</p> <p>15:25:47 8 THE WITNESS: I believe they did. They did</p> <p>15:25:53 9 in December.</p> <p>15:25:54 10 MR. ROBINSON: I know you believe, but you</p> <p>15:25:55 11 don't know what or if they took anything?</p> <p>15:25:58 12 THE WITNESS: From the response from the</p> <p>15:26:00 13 privacy office, they indicated that he -- I was expecting</p> <p>15:26:06 14 them to say here's where the data is because that was my</p> <p>15:26:10 15 question, can you tell me where the data is.</p> <p>15:26:13 16 MR. ROBINSON: And he told you that they had</p> <p>15:26:15 17 authorized access to the data?</p> <p>15:26:17 18 THE WITNESS: To HIPAA data, to the extent it</p> <p>15:26:21 19 was deidentified, and they had an approved IRB saying</p> <p>15:26:28 20 they were using identifiable data, so that is why I asked</p> <p>15:26:31 21 privacy's help.</p> <p>15:26:32 22 MR. ROBINSON: You still don't know today</p> <p>15:26:35 23 what data? You can't identify the data for us today?</p> <p>15:26:38 24 THE WITNESS: No, I think you would need the</p> <p>15:26:40 25 privacy office to do that.</p>
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<p>15:26:41 1 MR. ROBINSON: Okay.</p> <p>15:26:45 2 THE WITNESS: That was my question.</p> <p>15:26:49 3 MS. DONOSSO: Okay.</p> <p>15:26:50 4 MS. LEONARD: Can we take a short break?</p> <p>15:26:52 5 MS. DONOSSO: Sure.</p> <p>15:36:27 6 (Whereupon a recess was taken.)</p> <p>15:36:27 7 BY MS. DONOSSO:</p> <p>15:38:20 8 Q. So let's talk now -- so on December 2nd, is</p> <p>15:38:54 9 when you had that conversation, that exchange, with Jeff</p> <p>15:39:01 10 Botkin regarding the status of your complaint with him;</p> <p>15:39:08 11 is that correct? In December of 2012 is when you had</p> <p>15:39:13 12 that E-mail exchange with Jeff Botkin regarding the</p> <p>15:39:16 13 status of your complaint with him; is that correct?</p> <p>15:39:19 14 A. Yes.</p> <p>15:39:19 15 Q. Do you recall when you received your</p> <p>15:39:28 16 non-renewal letter from the University of Utah?</p> <p>15:39:32 17 A. I believe it was the 14th.</p> <p>15:39:38 18 Q. The 14th of December?</p> <p>15:39:47 19 A. I believe that is the date. It was a day or</p> <p>15:39:51 20 two after I met with the IT people.</p> <p>15:39:57 21 Q. Let me give you what we'll now mark as</p> <p>15:40:19 22 Exhibit 90.</p> <p>15:40:20 23 (Whereupon Exhibit 90 was marked for identification.)</p> <p>15:40:20 24 BY MS. DONOSSO:</p> <p>15:40:52 25 Q. Do you recognize this document?</p>	<p>15:40:53 1 A. Yes.</p> <p>15:40:54 2 Q. Can you tell me what it is?</p> <p>15:40:55 3 A. I just notified Botkin that my contract</p> <p>15:41:03 4 wasn't being renewed.</p> <p>15:41:04 5 Q. Now, previously in that exhibit binder, if</p> <p>15:41:08 6 you turn to Exhibit 20, do you recognize that document?</p> <p>15:41:26 7 A. Yes.</p> <p>15:41:28 8 Q. What is that document?</p> <p>15:41:29 9 A. That he's not renewing my contract.</p> <p>15:41:36 10 Q. Right, but that is your non-renewal letter;</p> <p>15:41:40 11 is that correct?</p> <p>15:41:41 12 A. Yes.</p> <p>15:41:42 13 Q. And this document is dated December 10th,</p> <p>15:41:45 14 2012; is that correct?</p> <p>15:41:46 15 A. I did not receive it until after I met with</p> <p>15:41:50 16 the privacy -- the IT people and the privacy officer.</p> <p>15:41:55 17 Q. Right, but this document is dated</p> <p>15:41:58 18 December 10th, 2012; correct?</p> <p>15:42:00 19 A. Yes.</p> <p>15:42:00 20 Q. And did you receive this document via mail or</p> <p>15:42:05 21 hand delivery?</p> <p>15:42:09 22 A. I think he handed it to me at the end of the</p> <p>15:42:18 23 day or sort on this day.</p> <p>15:42:20 24 Q. Okay, so according to Exhibit --</p> <p>15:42:24 25 A. I don't remember.</p>

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15:42:26	1 Q. -- 90, so although your non-renewal letter is	15:44:57	1 Q. Do you recognize this document?
15:42:29	2 dated December 10th.	15:44:58	2 A. Yes.
15:42:29	3 A. Right.	15:45:00	3 Q. Can you tell me what it is?
15:42:33	4 Q. Okay. According to what has now been marked	15:45:02	4 A. It's a complaint I filed with the privacy
15:42:35	5 as Exhibit 90, it appears that you actually received it	15:45:06	5 office.
15:42:39	6 and learned that you were not having your annual contract	15:45:06	6 Q. You mean the Office of Equal Opportunity and
15:42:44	7 renewed on or about December 12th --	15:45:11	7 Affirmative Action?
15:42:46	8 A. Correct.	15:45:11	8 A. Yes. Yes.
15:42:46	9 Q. -- of 2012; is that correct?	15:45:11	9 Q. And it is dated December 14th, 2012; correct?
15:42:48	10 A. Yes.	15:45:17	10 A. Uh-huh, yes.
15:42:48	11 Q. Okay, and was Jeff Botkin the first person	15:45:18	11 Q. So this would have been two days after you
15:43:02	12 that you contacted at the time that you received your	15:45:21	12 received your non-renewal letter; correct?
15:43:05	13 non-renewal letter?	15:45:24	13 A. Yes.
15:43:08	14 A. I don't recall.	15:45:24	14 Q. And according to this form, complaint form,
15:43:09	15 Q. Okay. Why was it your first instinct to	15:45:29	15 you -- your charge, your complaint form states that
15:43:15	16 figure out how to file a retaliation complaint when you	15:45:35	16 you're filing a complaint for religion, sex, age,
15:43:19	17 learned of your non-renewal?	15:45:39	17 disability and retaliation; is that correct?
15:43:22	18 A. I believe that I was being retaliated for	15:45:42	18 A. Yes.
15:43:26	19 reporting privacy concerns and plagiarism.	15:45:43	19 Q. And you attached a two-page, single spaced
15:43:34	20 Q. Okay.	15:45:54	20 summary of your allegations to this form; is that
15:43:36	21 A. And ethical concerns.	15:45:58	21 correct?
15:43:39	22 Q. Let me give you what we'll now mark as	15:45:58	22 A. Yes.
15:44:56	23 Exhibit 91.	15:45:59	23 Q. And is this a true and correct copy of what
15:44:56	24 (Whereupon Exhibit 91 was marked for identification.)	15:46:08	24 you submitted to OEO on December 14th of 2012?
15:44:56	25 BY MS. DONOSSO:	15:46:15	25 A. Yes.
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15:46:15	1 Q. Previously to this date, had you filed any	15:50:14	1 Nan Streeter.
15:46:24	2 complaints of discrimination during your tenure at the	15:50:18	2 Q. Okay, so let me show you what we'll mark as
15:46:28	3 university?	15:50:27	3 Exhibit No. 92.
15:46:30	4 A. Yes.	15:51:16	4 (Whereupon Exhibit 92 was marked for identification.)
15:46:30	5 Q. What complaints had you filed with the OEO	15:51:16	5 BY MS. DONOSSO:
15:46:37	6 prior to December of 2012?	15:51:17	6 Q. Do you recognize this E-mail?
15:46:39	7 A. I filed with Dean Li.	15:51:19	7 A. Yes.
15:46:42	8 Q. Dean Li is not with the OEO. I'm talking	15:51:19	8 Q. Okay, so this is about a week before you got
15:46:46	9 about with the OEO.	15:51:25	9 your non-renewal letter, around Thanksgiving time, and
15:46:48	10 A. This is the first one with the OEO.	15:51:29	10 you say to Harper: "I just wanted to let you know the
15:46:52	11 Q. Okay. You previously testified that you	15:51:34	11 University is still reviewing a number of questions that
15:49:09	12 consulted regarding your concerns with the Department of	15:51:35	12 I have related to privacy. I thought it may be something
15:49:14	13 Health; is that correct?	15:51:38	13 you want to know as there are papers that may come to
15:49:15	14 A. Concerns about what?	15:51:46	14 URADD oversight committee and perhaps other non-health
15:49:17	15 Q. Related to privacy and URADD and the data; is	15:51:52	15 agencies process or authority independent from yours.
15:49:23	16 that correct?	15:51:56	16 Thanks for your patience as I try to get clarification as
15:49:23	17 A. Yes.	15:52:00	17 I know privacy is important to us," and then Harper
15:49:23	18 Q. Did you get any type of advice or	15:52:05	18 responds and says, Judy, and there is a typo here, but it
15:49:35	19 recommendations from them in regards to your questions?	15:52:09	19 says: "Are that you are saying no one except you should
15:49:44	20 A. My understanding was that I needed written	15:52:14	20 have any access to URADD data? How do you know that it
15:49:48	21 approval from the oversight committee and the university	15:52:20	21 someone gone through the proper channel and has access to
15:49:54	22 or the health department IRB to give any data to anyone	15:52:23	22 URADD? I do not want to obstruct others from using this
15:49:58	23 that I had collected under my grant.	15:52:28	23 data as this is one of the functions of this registry to
15:50:01	24 Q. And who gave you that understanding?	15:52:32	24 foster the understanding of ASDs. Harper." And then you
15:50:07	25 A. Harper Randall, Marc Babitz, Lyle Odendahl,	15:52:39	25 respond: "Sorry for the confusion. Who has access to

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15:52:42	1	15:54:07	1
15:52:51	2	15:54:08	2
15:52:52	3	15:54:10	3
15:52:53	4	15:54:13	4
15:52:57	5	15:54:17	5
15:53:03	6	15:54:22	6
15:53:04	7	15:54:23	7
15:53:08	8	15:54:26	8
15:53:11	9	15:54:27	9
15:53:13	10	15:54:29	10
15:53:16	11	15:54:31	11
15:53:20	12	15:54:34	12
15:53:22	13	15:54:36	13
15:53:25	14	15:54:40	14
15:53:27	15	15:54:46	15
15:53:33	16	15:54:47	16
15:53:37	17	15:54:50	17
15:53:41	18	15:54:52	18
15:53:45	19	15:55:02	19
15:53:50	20	15:55:02	20
15:53:53	21	15:55:07	21
15:53:54	22	15:55:10	22
15:53:55	23	15:55:12	23
15:53:59	24	15:55:15	24
15:54:02	25	15:55:18	25
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15:55:22	1	15:56:40	1
15:55:24	2	15:56:54	2
15:55:28	3	15:57:00	3
15:55:31	4	15:57:03	4
15:55:37	5	15:57:06	5
15:55:41	6	15:57:09	6
15:55:42	7	15:57:11	7
15:55:44	8	15:57:13	8
15:55:50	9	15:57:15	9
15:55:55	10	15:57:15	10
15:55:57	11	15:57:16	11
15:55:59	12	15:57:18	12
15:56:02	13	15:57:21	13
15:56:05	14	15:57:25	14
15:56:08	15	15:57:29	15
15:56:11	16	15:57:29	16
15:56:14	17	15:57:33	17
15:56:16	18	15:57:33	18
15:56:17	19	15:57:35	19
15:56:20	20	15:57:35	20
15:56:21	21	15:57:35	21
15:56:28	22	15:57:39	22
15:56:32	23	15:57:39	23
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15:56:39	25	15:57:42	25

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15:57:46	1 or a security issue?	16:00:08	1 A. I see it.
15:57:48	2 A. No.	16:00:09	2 Q. Do you believe that's a clear description of
15:57:48	3 Q. Okay. You filed a report, a concern, a	16:00:17	3 your concern?
15:58:22	4 complaint with the university IRB office in July of 2012;	16:00:22	4 A. Yes.
15:58:28	5 is that correct?	16:00:23	5 Q. Now, in your -- in your first amended
15:58:29	6 A. Yes.	16:00:38	6 complaint, you've essentially alleged serious ethical
15:58:48	7 (Whereupon Exhibit 93 was marked for identification.)	16:00:53	7 concerns, research misconduct, breach of security
15:58:48	8 BY MS. DONOSSO:	16:00:59	8 agreements. Is that a fair statement?
15:58:49	9 Q. Let me give you what we've marked as	16:01:02	9 A. Yes.
15:58:52	10 Exhibit 93. Do you recognize this document?	16:01:02	10 Q. On Page 1, why did you put other problem or
15:58:58	11 A. Yes.	16:01:09	11 event instead of breach of security?
15:58:59	12 Q. Okay. Let's turn to the third page, which	16:01:17	12 A. So your question is under?
15:59:16	13 has PRD No. 9985 and this is where you're asked to	16:01:20	13 Q. Under type of report.
15:59:26	14 provide a narrative or description of the problem. Do	16:01:22	14 A. It was just a pull down file.
15:59:30	15 you see that?	16:01:25	15 Q. Right, and one of your options is breach of
15:59:32	16 A. On Page 3?	16:01:29	16 confidentiality or security.
15:59:34	17 Q. Uh-huh. Page 3.	16:01:30	17 A. I don't recall.
15:59:36	18 A. Yes.	16:01:34	18 Q. On the third page under your narrative, why
15:59:37	19 Q. Where it says provide a narrative description	16:01:45	19 didn't you just -- why didn't you say I believe my --
15:59:44	20 of corrective action, intervention or treatment provided,	16:01:50	20 there has been a breach of security agreements? Why did
15:59:50	21 here you wrote down reported concerns to Dr. McMahon and	16:01:54	21 you instead write down a list of what you've done as
15:59:56	22 Bakian, sought assistance from dean of research, filed a	16:01:58	22 opposed to explaining that you felt that there was a
15:59:57	23 concern, notified Centers of Disease Control and removed	16:02:01	23 breach of security and confidentiality agreements?
16:00:01	24 Dr. Bakian's assess to any research files. Do you see	16:02:03	24 A. As I recall the question was what action have
16:00:08	25 that?	16:02:05	25 you taken to try and resolve this.
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16:02:08	1 Q. After you filed this report, did the IRB	16:04:32	1 close out the report." And their explanation is: "This
16:02:26	2 office contact you seeking clarification of your report?	16:04:39	2 not the cases, as any data would have been transferred or
16:02:30	3 A. Nope.	16:04:43	3 viewed by other university employees. It appears that
16:02:31	4 Q. Okay, and did you eventually get an answer	16:04:47	4 your report stems from a concern about how the data was
16:02:39	5 from them regarding this report?	16:04:51	5 transferred or viewed." Do you see that in the second
16:02:42	6 A. My understanding was they said there was no	16:04:53	6 paragraph?
16:02:45	7 breach because it was accessed by university employees.	16:04:54	7 A. Yes.
16:02:52	8 They didn't address the question about access by	16:04:54	8 Q. Okay. "If this is a concern of overlapping
16:02:55	9 non-authorized users and they indicated that I may have	16:05:00	9 objectives amongst studies within your department, that
16:03:00	10 to file something at the end of the grant cycle.	16:05:04	10 concern should be addressed within your department and/or
16:03:06	11 Q. Let's look at the completion letter so we're	16:05:05	11 in a consultation with the Office of Research Integrity."
16:03:11	12 accurate about what they said.	16:05:09	12 Did you, in fact, consult with the Office of Research
16:03:36	13 (Whereupon Exhibit 94 was marked for identification.)	16:05:14	13 Integrity?
16:03:36	14 BY MS. DONOSSO:	16:05:14	14 A. That is Dr. Botkin.
16:03:52	15 Q. Do you recognize this document?	16:05:16	15 Q. Okay, and we already read their
16:03:54	16 A. Yes.	16:05:18	16 recommendation into the record. Okay, and then after
16:03:54	17 Q. Is it a true and correct copy of the response	16:05:25	17 this, you, in fact, did file a second complaint with the
16:04:00	18 that you received to your first complaint to the IRB	16:05:32	18 IRB office again; correct?
16:04:03	19 office?	16:05:34	19 A. I don't recall. Oh, yes, notifying them,
16:04:03	20 A. Yes.	16:05:41	20 yes.
16:04:04	21 Q. And this is dated approximately October 29th,	16:06:10	21 (Whereupon Exhibit 95 was marked for identification.)
16:04:15	22 2012, and it states: "Dr. Zimmerman. We have received	16:06:10	22 BY MS. DONOSSO:
16:04:19	23 the information you have provided." And it is their	16:06:13	23 Q. Do you recognize this document?
16:04:25	24 determination that, quote: "A breach of privacy	16:06:14	24 A. Yes.
16:04:28	25 confidentiality did not occur; therefore, the IRB will	16:06:15	25 Q. Is it a true and correct copy of the second

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16:06:20	1	report that you filed with the IRB office on or about	16:08:46	1	A. Yeah, let me read it for a second.
16:06:24	2	January 4th of 2013?	16:08:49	2	Q. Absolutely.
16:06:27	3	A. Yes.	16:09:05	3	A. Yes.
16:06:27	4	Q. Now, again, you had the option on the pull	16:09:05	4	Q. Okay, and you did not receive this until
16:06:37	5	down menu of choosing breach of confidentiality but you	16:09:09	5	after you were no longer with the university because this
16:06:42	6	chose to use the other problem or event option under	16:09:13	6	completion letter is dated July 22nd, 2013, and it states
16:06:48	7	Paragraph 2 on the first page. Do you see that?	16:09:26	7	that after reviewing your report form, as it was
16:06:52	8	MS. LEONARD: I want to clarify for the	16:09:34	8	previously determined in the previous complaint, they
16:06:54	9	record that on the face of the document, you can't tell	16:09:39	9	don't believe that the present report form does not
16:06:57	10	if there is a pull down screen.	16:09:44	10	represent an unanticipated problem involving risk to
16:06:59	11	MS. DONOSSO: We'll go over that on John	16:09:46	11	participants or others and, therefore, they determined
16:07:03	12	Stillman's deposition tomorrow.	16:09:48	12	that a breach of privacy or confidentiality did not
16:07:18	13	Q. Okay. Let's turn to -- let's turn to Page 2	16:09:53	13	occur; therefore, they will close out the report. Do you
16:07:30	14	under problem or event description. Here you do provide	16:09:56	14	see that on the second paragraph?
16:07:38	15	the narrative, you state: "Dr. McMahon took over access	16:09:58	15	A. I do.
16:07:43	16	of my grant files for which I was the principal	16:09:59	16	Q. Okay. Okay. I'm only aware of these two
16:07:46	17	investigator on January 4th." Do you see that? And then	16:10:12	17	formal complaint forms with the IRB office. Did you file
16:07:48	18	you also state that he blocked your access to the files	16:10:17	18	any other complaint forms after these two or are these
16:07:53	19	for your research of the Utah IRB. And then do you	16:10:22	19	two the only ones that you filed with the IRB office?
16:08:11	20	recall getting a response to this complaint?	16:10:26	20	A. These are the only two that I can recall.
16:08:18	21	A. I don't recall.	16:10:29	21	Q. Okay. There was an investigation conducted
16:08:21	22	Q. Okay.	16:10:45	22	by Chris Kidd and Jerry Smith regarding the allegations
16:08:42	23	(Whereupon Exhibit 96 was marked for identification.)	16:10:52	23	of HIPAA, HITECH and FERPA regulations. I want to
16:08:42	24	BY MS. DONOSSO:	16:10:59	24	address those at this time. Okay, we have these. Do we
16:08:43	25	Q. Does this refresh your recollection?	16:12:34	25	have this one or not, the original exhibit? I don't want
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16:12:38	1	to mark something twice.	16:15:24	1	but that's what it says.
16:13:41	2	MS. LEONARD: It's 39.	16:15:25	2	Q. Okay, and it states on the document that this
16:13:43	3	MS. DONOSSO: I thought we had. Thank you,	16:15:34	3	arose based on allegations by Dr. Judy Zimmerman that Dr.
16:13:47	4	okay.	16:15:38	4	Bill McMahon had accessed data in violation of HIPAA,
16:13:47	5	Q. Let me show what we have previously marked as	16:15:45	5	HITECH and FERPA regulations. Now, he does state that
16:13:51	6	Exhibit No. 39. Do you recognize this document?	16:15:50	6	his report does not address any FERPA issues and you had
16:13:56	7	A. Yes.	16:15:53	7	previously testified to that. As the information,
16:13:57	8	Q. So this is a final report that was prepared	16:15:56	8	security and privacy office is charged only with HIPAA
16:14:11	9	by Jerry Smith, who is a senior analyst at the security	16:16:00	9	and HITECH compliance. Do you see that at the first
16:14:17	10	and privacy office. It looks like it was finalized on	16:16:04	10	sentence of the second paragraph?
16:14:32	11	October 2nd of 2012; is that correct?	16:16:05	11	A. I see that, but I doubled check with the
16:14:38	12	A. I don't know.	16:16:07	12	privacy office and they said that is incorrect. They
16:14:41	13	Q. Well, it says right there, October 2nd, 2012,	16:16:11	13	deal with FERPA issues as well.
16:14:46	14	that is just the date that is listed.	16:16:13	14	Q. Who told you that?
16:14:48	15	A. It wasn't signed, so I don't know.	16:16:14	15	A. Brad Nelson.
16:14:50	16	Q. Yeah. Have you ever seen this document	16:16:16	16	Q. Okay. When did he tell you that?
16:14:52	17	before?	16:16:23	17	A. Sometime shortly after I received this.
16:14:52	18	A. Yes, I received it from our financial person.	16:16:33	18	Q. Now, here it says: "I would direct Dr.
16:14:55	19	Q. Would that be Dan Hogge?	16:16:35	19	Zimmerman to contact Robert Payne in the office of
16:14:59	20	A. Yes.	16:16:38	20	general counsel with any allegations of violations of
16:14:59	21	Q. Okay, and, now, according to this document,	16:16:41	21	FERPA." Did you ever contact Robert Payne?
16:15:06	22	he says that he began his investigation on	16:16:44	22	A. Yes.
16:15:12	23	September 2nd -- September 7th, excuse me, September 7th,	16:16:44	23	Q. And when did you contact him?
16:15:20	24	2012; is that correct?	16:16:46	24	A. There is some E-mails. I don't recall but it
16:15:22	25	A. I don't know when he began his investigation	16:16:52	25	was shortly after this.

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<p>16:16:53 1 Q. What did Mr. Payne tell you regarding the 16:16:57 2 FERPA violations? 16:16:58 3 A. Nothing. 16:16:59 4 Q. Did you ask him to do something and did he 16:17:05 5 just not follow through with it or what happened? 16:17:08 6 A. We had no response. 16:17:09 7 Q. So what did you ask Mr. Payne to do that he 16:17:14 8 didn't respond to? 16:17:16 9 A. We asked him about this question and my 16:17:21 10 attorney contacted him as well. 16:17:23 11 Q. Well, there's no question here. He just 16:17:27 12 directed you to contact him. Did you give him any 16:17:29 13 specific assignment or did you give him a specific 16:17:33 14 directive? 16:17:33 15 A. My attorney at that time dealt with him. 16:17:36 16 Q. Okay. I have not seen any E-mails regarding 16:17:47 17 FERPA or between Lisa and Robert Payne. Would you be 16:17:52 18 willing to provide those to us before the close of 16:17:55 19 discovery regarding what happened between Lisa and Robert 16:18:00 20 regarding any FERPA allegations or violations? 16:18:03 21 MS. LEONARD: We'll provide any 16:18:04 22 non-privileged communications, sure. 16:18:07 23 MS. DONOSSO: Yeah, of course. 16:18:09 24 Q. Okay, so then he goes on to say that he 16:18:12 25 arranged interviews with yourself as well as with Dr.</p>	<p>16:18:18 1 McMahon and it is his opinion that given the fact that 16:18:31 2 the data is -- in the second page, sorry, I've moved on 16:18:34 3 really quickly because I recognize there is a lot to go 16:18:37 4 through and I don't want to just read the letter, since 16:18:40 5 it speaks for itself. The last paragraph states: "To 16:18:43 6 the extent that the data are deidentified, Dr. McMahon's 16:18:46 7 use of such data would not violate HIPAA. To the extent 16:18:50 8 that the data are identifiable, Dr. McMahon was permitted 16:18:54 9 by the relevant data use agreements, grant documents or 16:18:59 10 by authority of the Department of Health to access this 16:19:01 11 data for legitimate purposes. In my opinion, Dr. McMahon 16:19:08 12 did not violate HIPAA or organizational policy." So this 16:19:13 13 was the conclusion of this investigation; is that 16:19:17 14 correct? 16:19:17 15 A. I don't know. 16:19:18 16 Q. Well, you filed a complaint, the university 16:19:24 17 investigated it, concluded its investigation and this is 16:19:28 18 what the conclusion of the report states. 16:19:31 19 A. And then my attorney and I met with Phyllis 16:19:36 20 Vetter and Dean Li. 16:19:37 21 Q. Okay, but do you agree that that's what the 16:19:40 22 report states what I just read to you, the last paragraph 16:19:43 23 of this report states that there was no HIPAA violation? 16:19:48 24 A. To the extent that the data was deidentified. 16:19:53 25 I'm not sure if you're asking me to say this looks like</p>
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<p>16:19:56 1 what Jerry Smith submitted on 10/02/2012. 16:20:01 2 Q. So according to -- let me ask you the 16:20:04 3 question again. According to the investigation conducted 16:20:08 4 by Mr. Smith in the fall of 2012, he did not find that 16:20:13 5 Dr. McMahon committed any HIPAA violations? 16:20:17 6 A. That's what it looks like. 16:20:19 7 Q. We're going to go back to the complaint. Do 16:20:58 8 you still have a copy of the complaint in front of you? 16:21:01 9 A. Yes. 16:21:01 10 Q. Let's turn to Page 19. In your complaint, 16:21:11 11 you have a third cause of action, which is property 16:21:16 12 interest with due -- without due process under Section 16:21:18 13 1983. Can you just briefly state for me what is the 16:21:23 14 basis of this claim? 16:21:26 15 MS. LEONARD: I'll just object that the 16:21:27 16 document speaks for itself and calls for a legal 16:21:30 17 conclusion. 16:21:33 18 You can answer. 16:21:34 19 THE WITNESS: I had collected data prior to 16:21:40 20 my employment at the university, which I had IRBs to have 16:21:46 21 the data. I had IRBs at the Utah Department of Health, 16:21:54 22 as well as the University of Utah, none of those IRBs 16:21:59 23 have been rescinded, and my access to my grant files were 16:22:05 24 blocked and I was unable to continue on a multimillion 16:22:14 25 dollar grant and/or continue my research using the data</p>	<p>16:22:20 1 that I had IRBs to access the data. 16:22:25 2 BY MS. DONOSSO: 16:22:33 3 Q. Okay. You also have a fourth cause of 16:22:37 4 action, which is deprivation of property interest without 16:22:41 5 due process under the Utah Constitution. What is your 16:22:45 6 basis for this claim? 16:22:48 7 MS. LEONARD: Same objections. 16:22:49 8 THE WITNESS: You know, I'm not familiar with 16:22:51 9 the legal terminology on how cause three and four 16:22:58 10 differentiate, but there again, I had grant awards of 16:23:02 11 considerable value that I was prohibited from completing. 16:23:12 12 BY MS. DONOSSO: 16:23:12 13 Q. Let's turn to Page 22. Now, this cause of 16:23:18 14 action you are alleging against both the University of 16:23:21 15 Utah and Dr. McMahon, both as in his individual and 16:23:24 16 official capacities. What are your bases for this cause 16:23:31 17 of action? 16:23:33 18 MS. LEONARD: Same objections. 16:23:37 19 THE WITNESS: You know, the comments that 16:23:40 20 were made about me, hurt my reputation and my integrity. 16:23:46 21 I committed to all the data sources that the data would 16:23:49 22 not be shared with third parties and that the CDC 16:23:54 23 policies and procedures would be followed and I wasn't 16:23:58 24 allowed to keep those promises. 16:24:01 25 BY MS. DONOSSO:</p>

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16:24:02 1 Q. But specifically how has the university
16:24:09 2 impugned your good name, reputation or integrity
16:24:09 3 publicly?
16:24:10 4 A. Well, in a public faculty meeting, they
16:24:15 5 accused me of having a personality disorder because I'm
16:24:18 6 older and I can't keep up. I'm not as smart even though
16:24:25 7 I'm old.
16:24:25 8 Q. Are you referring to your third year review?
16:24:27 9 A. That was a public meeting with faculty.
16:24:31 10 Q. But you realize that people had to be invited
16:24:34 11 to that meeting, it was not a public faculty meeting?
16:24:37 12 A. I had faculty come to me saying how
16:24:39 13 embarrassed they were about the comments that were made
16:24:42 14 about me.
16:24:42 15 Q. What faculty?
16:24:43 16 A. Janet Lainhart. Deb Bilder was telling the
16:25:00 17 CDC I wouldn't work with them, when, in fact, McMahon had
16:25:04 18 told them I couldn't work on the grant. He called the
16:25:08 19 police on me. He accused me falsely with unsubstantiated
16:25:16 20 claims with the police. This data that was published,
16:25:23 21 the work I did was published under somebody else's name
16:25:28 22 and it's wrong. There are errors in it. Research that I
16:25:34 23 had done was published under other people's names and
16:25:38 24 plagiarized.
16:25:52 25 Q. And you have evidence that Dr. McMahon did

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16:25:56 1 this?
16:25:56 2 A. Did what?
16:25:57 3 Q. That Dr. McMahon plagiarized your work?
16:26:03 4 A. My research in progress was published and
16:26:09 5 given to Bakian and Bilder and two years of my grant work
16:26:15 6 was published under Bilder and McMahon's name.
16:26:19 7 Q. Are you referring to the article that you
16:26:22 8 were not willing to finish and that they had to finish
16:26:25 9 for you because you refused to finish that article?
16:26:28 10 A. That was six weeks before I left and staff
16:26:30 11 had been told they couldn't talk to me. I'd been locked
16:26:36 12 out of my office, the data was wrong and I'd been told I
16:26:40 13 couldn't work on it.
16:26:41 14 Q. They sent you E-mails asking you to, please,
16:26:44 15 finish that article and, please, finish working on those
16:26:45 16 grants.
16:26:45 17 A. But I didn't have the tools necessary to do
16:26:47 18 that because the data had been locked from my access.
16:26:51 19 Q. Do you not recall getting E-mails from Dr.
16:26:56 20 Bilder asking you to, please, collaborate with her on
16:26:59 21 finishing those grants and helping her finish the work on
16:27:02 22 those grants and on that article?
16:27:02 23 A. My directive from McMahon was that I couldn't
16:27:05 24 work on those grants and I didn't have the authority to
16:27:08 25 work on those grants and I knew the errors hadn't been

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16:27:11 1 corrected and I knew when they took the data that they
16:27:16 2 didn't have any authorization from the data sources to
16:27:19 3 have the data.
16:27:24 4 Q. Okay. How has the university foreclosed
16:27:31 5 employment opportunities?
16:27:32 6 A. Well, my hope was to be able to leave the
16:27:37 7 psychiatry department and continue the grant in a
16:27:39 8 different department and it foreclosed that opportunity.
16:27:45 9 People were told that if they saw me near the building, I
16:27:48 10 was to be reported. Bilder told people I had a
16:27:53 11 personality disorder.
16:28:01 12 Q. And what has Dr. McMahon done to foreclose
16:28:05 13 employment opportunities?
16:28:06 14 A. To do research, you billed on your past
16:28:10 15 research, so McMahon took away all of my research in
16:28:15 16 progress and the data I had collected over a 10-year
16:28:18 17 period, so it's -- it's very difficult to start all over
16:28:25 18 again when you have worked for 10 years to collect data
16:28:29 19 and start research that you can't finish.
16:28:32 20 Q. Did he do that simply by not renewing your
16:28:36 21 contract?
16:28:36 22 A. He did that by blocking my access to the data
16:28:43 23 before my contract was through. He did that by --
16:28:53 24 Q. Why did he have to block your access to the
16:28:55 25 data?

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16:28:57 1 MS. LEONARD: Was there something else you
16:28:58 2 wanted to say?
16:29:00 3 THE WITNESS: I don't know.
16:29:02 4 MS. LEONARD: She cut you off.
16:29:03 5 THE WITNESS: Could you repeat the question?
16:29:03 6 BY MS. DONOSSO:
16:29:07 7 Q. Did you give him reasons to cut off your
16:29:10 8 access to the data?
16:29:12 9 A. He cut off access to -- so all the files for
16:29:19 10 my research were on a partition server and they were
16:29:23 11 labeled different things by me and my staff, not related
16:29:29 12 to the content of those files, and so he blocked access
16:29:39 13 to a file named URADD, which did not necessarily mean --
16:29:51 14 he had not collected the data. It was all data collected
16:29:55 15 for my grants and research and he blocked access to that
16:29:59 16 file, which was necessary to continue with the grant,
16:30:04 17 correcting the grant errors.
16:30:05 18 Q. That wasn't my question. Did you give him
16:30:07 19 reasons, especially during your last six months at the
16:30:10 20 university, to remove you from URADD and the CDC grants?
16:30:15 21 A. I think the reason that he had was he -- I
16:30:20 22 had reported him.
16:30:21 23 Q. So you weren't -- you did not instruct your
16:30:25 24 abstractors to start making photocopies of information
16:30:31 25 and clinical reports --

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16:30:31	1	A. When?	16:32:21	1	able to change the locks and there were -- there was a
16:30:36	2	Q. -- at the department of health?	16:32:24	2	master key that anyone that could come in the office had
16:30:38	3	A. After?	16:32:29	3	and the codes for the safe were known, I took that hard
16:30:39	4	Q. No, like in January and February of 2012.	16:32:42	4	drive home as required by the CDC and I returned it the
16:30:44	5	A. No.	16:32:47	5	day I was removed as the CDC PI and I dropped it off at
16:30:45	6	Q. No.	16:32:53	6	the Office of Public Safety because I'd been locked out
16:30:47	7	A. Not that I recall. I mean, I don't know	16:32:57	7	of my office.
16:30:49	8	what -- we were scanning in documents that went into --	16:33:06	8	Q. Did your attorney -- did you discuss that
16:30:56	9	but, no, I don't recall. If they were, it was grant	16:33:08	9	with your attorney?
16:31:04	10	files. I am aware that Janet Lainhart had her staff	16:33:12	10	MS. LEONARD: Anything you and I have talked
16:31:10	11	copying records because they were concerned that they	16:33:14	11	about is confidential.
16:31:16	12	also would have their access blocked by McMahon.	16:33:20	12	THE WITNESS: My attorney communicated
16:31:25	13	Q. And you don't recall packing up clinicians	16:33:23	13	information to Scott Smith.
16:31:30	14	notes, 20 boxes of clinicians notes and making a	16:33:23	14	BY MS. DONOSSO:
16:31:33	15	photocopy of the hard drive and taking it home with you?	16:33:32	15	Q. Did you tell anybody that you had removed a
16:31:36	16	A. So in November, I did take -- I was asked to	16:33:35	16	hard drive containing protected information of minors, of
16:31:39	17	remove the boxes from the university because he did not	16:33:44	17	over 160,000 minors, that you were storing at your house
16:31:46	18	want to store them there. As we were finished with them,	16:33:49	18	for several months?
16:31:50	19	I rented a storage space and put them there in November	16:33:51	19	A. They weren't stored at my house for several
16:31:55	20	of -- first part of November and they were all grant	16:33:51	20	months. It was only several weeks.
16:31:59	21	related files that were deidentified.	16:33:54	21	Q. What would have happened if one of your staff
16:32:01	22	Q. What about the hard drive, Judy?	16:33:57	22	members had taken a hard drive with that kind of
16:32:04	23	A. The hard drive, we were required to have a	16:34:00	23	information to their house for several weeks?
16:32:08	24	backup copy of the CDC files off-site on an encrypted	16:34:02	24	A. First of all, they didn't have a safe and
16:32:14	25	hard drive. When my office was ransacked and we weren't	16:34:07	25	they weren't required to have a backup copy of their
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16:34:10	1	records off-site, which I was required by the CDC.	16:36:07	1	standards.
16:34:13	2	Q. So then why didn't you do that from 2008 to	16:36:07	2	Q. So who gave you authority in writing to be
16:34:17	3	2013, Judy?	16:36:11	3	able to store this information off-site?
16:34:18	4	A. Because we were -- because we didn't have a	16:36:14	4	A. In the CDC policy, we're required to do that.
16:34:21	5	hard drive that was capable of being encrypted and we had	16:36:18	5	Q. Okay, so show me anywhere in this contract
16:34:25	6	it back ordered from the -- we tried to get one through	16:36:21	6	where it says that you're required to store that
16:34:29	7	the bookstore for months and it was on back order. So	16:36:24	7	off-site, because actually I just read it and it says the
16:34:35	8	what we had learned from our previous privacy	16:36:30	8	opposite, Judy.
16:34:40	9	investigation was that if -- had we been able to prove a	16:37:36	9	A. Backup files will be stored in a secured
16:34:45	10	certain encryption level and somebody had stolen it, all	16:37:41	10	off-site facility.
16:34:50	11	those files would not be accessible to anyone and it'd be	16:37:43	11	Q. But these were not backup files.
16:34:59	12	the end of the story, but because we couldn't prove when	16:37:44	12	A. They were backup files of all my grant files
16:35:05	13	the thumb drive was stolen, that it met the standards, it	16:37:47	13	and research files.
16:35:09	14	went through a rigorous review and we were in the process	16:37:48	14	Q. You took everything.
16:35:17	15	of transferring our files to a different server and I	16:37:50	15	A. Everything was my research and grant files.
16:35:24	16	thought I was being moved to a different department.	16:37:54	16	Q. How could everything belong to you when it
16:35:27	17	Q. So why when some of your staff members, as	16:37:57	17	had been gathered in collaboration for over ten -- for
16:35:33	18	much as lost a flash drive with information in it, why	16:38:00	18	like almost eight years by all of these abstractors
16:35:38	19	were they written up and eventually fired just for losing	16:38:04	19	working for the university?
16:35:43	20	a flash drive or a laptop with information in it?	16:38:05	20	A. They were backup files for grants that I was
16:35:46	21	A. The problem with that flash drive was it was	16:38:09	21	the PI on.
16:35:49	22	supposed to be returned to the office and that flash	16:38:09	22	Q. And that Bill McMahon was also the PI on.
16:35:53	23	drive had data on it, which it shouldn't have had data on	16:38:13	23	A. He was not.
16:35:57	24	it, and the health department couldn't prove that the	16:38:14	24	Q. Both of you were listed on these grant
16:36:01	25	flash drive that they purchased was encrypted to the CDC	16:38:18	25	applications, so you honestly expect us to believe that

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<p>16:38:22 1 you have evidence that everything that was -- like all</p> <p>16:38:25 2 this information data that had been gathered by the</p> <p>16:38:29 3 school districts throughout the Wasatch Front, throughout</p> <p>16:38:32 4 the entire state for years, from before you even came to</p> <p>16:38:36 5 the University of Utah, all belonged to you?</p> <p>16:38:39 6 A. I'm not saying they belonged to me. They</p> <p>16:38:42 7 were a backup file, and when I was taken off the grant, I</p> <p>16:38:46 8 returned it to the Office of Public Safety because I</p> <p>16:38:49 9 didn't know who owned the data.</p> <p>16:38:50 10 Q. So, okay, so you're saying you didn't even</p> <p>16:38:52 11 know who owned the data and you decided to just take it</p> <p>16:38:55 12 home with you for three weeks?</p> <p>16:38:57 13 A. I'm saying I had the backup file in case we</p> <p>16:39:01 14 needed it, so, for example, at the health department --</p> <p>16:39:05 15 Q. You didn't answer my question. You just said</p> <p>16:39:07 16 you didn't even know who it belonged to, and so since you</p> <p>16:39:10 17 didn't know who it belonged to, you decided to take it</p> <p>16:39:15 18 home for three weeks?</p> <p>16:39:16 19 A. I took my grant files that I had collected,</p> <p>16:39:20 20 that were highly encrypted to protect them because of</p> <p>16:39:24 21 security issues in the office and I returned them.</p> <p>16:39:29 22 Q. What security issues? Everybody had just</p> <p>16:39:33 23 given you reports saying that there was no issue, that</p> <p>16:39:35 24 this is not an IRB issue, this is not a security issue.</p> <p>16:39:39 25 You had just started to get all kinds -- by February when</p>	<p>16:39:41 1 you did this, all of these people had gotten back to you</p> <p>16:39:45 2 and said this is not an IRB issue.</p> <p>16:39:47 3 A. So I went to the health department and I said</p> <p>16:39:51 4 have you rescinded my access to the data I collected at</p> <p>16:39:55 5 the health department or for the CDC grant or any of my</p> <p>16:39:59 6 IRBs that gave me access to this data and they said no.</p> <p>16:40:05 7 The legal opinion from Rex Scott from the Utah Department</p> <p>16:40:12 8 of Health indicated I had authorization to have those</p> <p>16:40:14 9 data because I had -- I had IRBs to have the data.</p> <p>16:40:18 10 Q. So why haven't you produced this legal</p> <p>16:40:21 11 opinion from Rex Scott during this lawsuit?</p> <p>16:40:24 12 A. It's in the discovery items you've sent us.</p> <p>16:40:26 13 Q. From Rex Scott saying that --</p> <p>16:40:28 14 A. Rex Olsen, excuse me.</p> <p>16:40:30 15 Q. Okay. That I sent you?</p> <p>16:40:33 16 A. It was in the discovery items, so.</p> <p>16:40:40 17 Q. An attorney general has given you an E-mail</p> <p>16:40:44 18 saying that you own all of this data?</p> <p>16:40:46 19 A. No, the attorney general, after the fact,</p> <p>16:40:49 20 after I had already returned the files, said that I had</p> <p>16:40:55 21 authority to have the files because I had IRBs to have</p> <p>16:40:59 22 the files, and they had not rescinded my IRBs, the</p> <p>16:41:05 23 university had not rescinded my IRBs, nor had the health</p> <p>16:41:07 24 department at any time, nor did the health department at</p> <p>16:41:10 25 any time notify me that they had rescinded my authority</p>
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<p>16:41:15 1 to do grant activities.</p> <p>16:41:20 2 Q. So this is your basis for believing that</p> <p>16:41:22 3 you -- this is your intellectual property?</p> <p>16:41:25 4 A. All I'm saying is --</p> <p>16:41:28 5 Q. So is it Rex Olsen's E-mail or is it this</p> <p>16:41:32 6 letter that you received from the vital records?</p> <p>16:41:33 7 MR. ROBINSON: I think she actually testified</p> <p>16:41:35 8 a moment ago that it belonged to the Department of</p> <p>16:41:38 9 Health.</p> <p>16:41:38 10 THE WITNESS: So I found it interesting in</p> <p>16:41:42 11 McMahon's testimony he said it belonged -- the data</p> <p>16:41:45 12 belonged to the health department. In Bilder's</p> <p>16:41:47 13 testimony, she stated that the data belonged to the</p> <p>16:41:51 14 university. I would say I don't know who owns the data,</p> <p>16:41:57 15 so I returned it.</p> <p>16:41:59 16 MR. ROBINSON: Well, you said just a moment</p> <p>16:42:01 17 ago that the Department of Health owns it, so you don't</p> <p>16:42:03 18 own it?</p> <p>16:42:04 19 THE WITNESS: I don't believe I own it.</p> <p>16:42:07 20 MR. ROBINSON: Very good. Thank you.</p> <p>16:42:08 21 THE WITNESS: And I returned it the day I was</p> <p>16:42:11 22 informed I was no longer on the grant and I established a</p> <p>16:42:18 23 proper chain of custody so I wouldn't be accused of</p> <p>16:42:22 24 anything later.</p> <p>16:42:22 25 BY MS. DONOSSO:</p>	<p>16:42:54 1 Q. So we're up to Claim 6. This is also a</p> <p>16:43:15 2 liberty interest but this is under the Utah Constitution.</p> <p>16:43:18 3 What is your basis for this claim?</p> <p>16:43:20 4 A. Which one?</p> <p>16:43:21 5 MS. LEONARD: Objection to the extent it</p> <p>16:43:23 6 calls for a legal conclusion and document speaks for</p> <p>16:43:26 7 itself.</p> <p>16:43:26 8 BY MS. DONOSSO:</p> <p>16:43:27 9 Q. This is on Page 23 of the amended complaint.</p> <p>16:43:33 10 A. I think it's similar to what I said before.</p> <p>16:43:36 11 Q. Okay, so then let's turn to Page 24, which is</p> <p>16:43:45 12 your seventh cause of action and this one is against both</p> <p>16:43:48 13 the University of Utah and Dr. McMahon. This is your</p> <p>16:43:54 14 deprivation of first amendment right under Section 1983.</p> <p>16:43:56 15 What is the basis for this claim?</p> <p>16:43:58 16 MS. LEONARD: Same objections.</p> <p>16:43:59 17 THE WITNESS: I believe that because I raised</p> <p>16:44:05 18 questions and sought clarification about privacy issues</p> <p>16:44:10 19 and the sharing of identifiable data that I was</p> <p>16:44:15 20 retaliated against.</p> <p>16:44:18 21 BY MS. DONOSSO:</p> <p>16:44:19 22 Q. So you believed that filing all of the</p> <p>16:44:22 23 various complaints that was -- you believed that was</p> <p>16:44:27 24 protected speech?</p> <p>16:44:29 25 MS. LEONARD: Objection that it calls for a</p>

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<p>16:44:31 1 legal conclusion. 16:44:33 2 You can answer. 16:44:37 3 THE WITNESS: I don't know the legal 16:44:39 4 ramifications of this. 16:44:39 5 BY MS. DONOSSO: 16:44:42 6 Q. Other than filing the complaints that we've 16:44:44 7 talked about with Botkin, with OEO, the privacy office, 16:44:48 8 with the IRB, did you do anything else? Did you contact 16:44:52 9 the media? Did you send out mass E-mails to other 16:44:57 10 people? 16:44:57 11 A. No one. I did report to Utah State Office of 16:45:06 12 Education and Eric Fombonne that the data -- that I was 16:45:16 13 retracting an article and why and I notified the journal. 16:45:21 14 Q. Who is the journal? 16:45:23 15 A. Journal of Autism and Developmental 16:45:26 16 Disabilities. 16:45:27 17 Q. Okay. 16:45:27 18 A. I notified the journal where my grant data 16:45:33 19 was published under McMahon's and Bilder's name that 16:45:38 20 there were errors in it and that they didn't do the work. 16:45:41 21 Q. Okay. Assuming all of these various 16:45:46 22 complaints that you filed with the university were 16:45:48 23 protected speech, how do you believe that this was a 16:45:52 24 motivating factor of the university's decision not to 16:45:55 25 renew your contract?</p>	<p>16:45:57 1 MS. LEONARD: Objection in that it calls for 16:45:58 2 a legal conclusion. 16:45:59 3 THE WITNESS: Because I had no problems with 16:46:02 4 performance until I brought these concerns to the 16:46:05 5 attention of the university. 16:46:06 6 BY MS. DONOSSO: 16:46:18 7 Q. Let's move onto your next cause of action, 16:46:21 8 which is on Page 25, and it's your deprivation of first 16:46:28 9 amendment rights under the Utah Constitution. It's very 16:46:34 10 similar to your seventh cause of action. Would you 16:46:36 11 change your testimony at all or is this the same thing? 16:46:39 12 A. On No. 8? 16:46:40 13 Q. Uh-huh. It's also related to protected 16:46:45 14 speech. 16:46:45 15 A. Just the economic impact has been huge. 16:46:55 16 Q. But other than making the complaint we've 16:46:59 17 talked about to Botkin, the OEO, privacy, the IRB, was 16:47:02 18 there any other speech that has not been mentioned during 16:47:07 19 your deposition that you consider to be protected? 16:47:12 20 A. I think the fact that I reported data errors, 16:47:18 21 research misconduct is significant. 16:47:21 22 Q. Who did you report those to? 16:47:24 23 A. I reported it to Dean Li, Dr. Parks and 16:47:27 24 President Pershing and I reported it to the CDC. 16:47:36 25 Q. When did you report those to the CDC?</p>
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<p>16:47:43 1 A. Right before I was taken off the grant. 16:48:01 2 Q. Who did you report those to the CDC? 16:48:04 3 A. John Baio, Anita Washington, there was 16:48:11 4 another epidemiologist and I can't remember for sure if 16:48:19 5 Marshall and Urgan Alsop was on call as well. 16:48:21 6 Q. So you made this during a phone call or did 16:48:25 7 you do this in writing via E-mail? 16:48:26 8 A. Phone call. 16:48:27 9 Q. Okay. Let's turn to Page 26 of your 16:48:39 10 complaint. This is your ADA claim. What is your basis 16:48:47 11 of your ADA claim? 16:48:49 12 A. I don't have anything to add other than what 16:48:53 13 we've already talked about. 16:48:54 14 Q. So you never, other than what we've talked 16:49:02 15 about as far as getting out of that meeting, you actually 16:49:04 16 never asked for any other accommodations? 16:49:11 17 A. I asked that my chair be returned after they 16:49:16 18 put me in a different office because it was a special 16:49:20 19 chair, which they returned. 16:49:22 20 Q. Okay. Then Page 27, this is your ADEA cause 16:49:34 21 of action. This is your age cause of action. What is 16:49:37 22 the basis of this claim? 16:49:40 23 MS. LEONARD: Objection in that it calls for 16:49:41 24 a legal conclusion and the document speaks for itself. 16:49:45 25 THE WITNESS: Basically I felt like the</p>	<p>16:49:50 1 standards were different for me because I was older, and 16:49:57 2 I was required to give my research ideas and funding to 16:50:03 3 support younger female faculty and he gave my research in 16:50:09 4 progress to younger females. 16:50:09 5 BY MS. DONOSSO: 16:50:22 6 Q. But your non-renewal letter does not mention 16:50:26 7 age anywhere; is that correct? 16:50:30 8 A. I don't believe so. 16:50:32 9 Q. Okay. 16:50:36 10 A. He told me he could get Amanda on the cheap. 16:50:41 11 Q. Okay, and when do you allege that that 16:50:44 12 happened? 16:50:44 13 A. I say that happened around the spring of 16:50:52 14 2012. 16:50:57 15 Q. And your outline of expectations also does 16:51:01 16 not mention age anywhere? 16:51:05 17 A. No. 16:51:16 18 MR. ROBINSON: No, it does not? 16:51:18 19 THE WITNESS: The outline of expectations? 16:51:21 20 MR. ROBINSON: Are you saying, no, it does 16:51:23 21 not mention age? 16:51:25 22 THE WITNESS: I don't see that. 16:51:26 23 MR. ROBINSON: Okay. 16:51:26 24 BY MS. DONOSSO: 16:51:28 25 Q. Okay. Now, on Page 29 of your complaint,</p>

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16:51:31	1	16:52:59	1
16:51:36	2	16:53:03	2
16:51:40	3	16:53:05	3
16:51:41	4	16:53:25	4
16:51:43	5	16:53:25	5
16:51:50	6	16:53:25	6
16:51:57	7	16:53:48	7
16:52:01	8	16:53:50	8
16:52:06	9	16:53:58	9
16:52:06	10	16:54:06	10
16:52:07	11	16:54:12	11
16:52:15	12	16:54:16	12
16:52:19	13	16:54:27	13
16:52:26	14	16:54:31	14
16:52:32	15	16:54:34	15
16:52:34	16	16:54:36	16
16:52:40	17	16:54:36	17
16:52:41	18	16:54:38	18
16:52:46	19	16:54:40	19
16:52:49	20	16:54:40	20
16:52:49	21	16:54:41	21
16:52:52	22	16:54:47	22
16:52:52	23	16:54:50	23
16:52:55	24	16:54:56	24
16:52:55	25	16:54:58	25
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16:54:58	1	16:56:29	1
16:55:03	2	16:56:39	2
16:55:05	3	16:56:44	3
16:55:08	4	16:56:44	4
16:55:09	5	16:56:48	5
16:55:12	6	16:56:52	6
16:55:22	7	16:56:57	7
16:55:27	8	16:57:02	8
16:55:33	9	16:57:09	9
16:55:36	10	16:57:15	10
16:55:37	11	16:57:20	11
16:55:38	12	16:57:36	12
16:55:43	13	16:57:39	13
16:55:47	14	16:57:43	14
16:55:51	15	16:57:47	15
16:55:51	16	16:57:52	16
16:55:58	17	16:57:56	17
16:56:01	18	16:57:57	18
16:56:02	19	16:58:01	19
16:56:05	20	16:58:01	20
16:56:10	21	16:58:05	21
16:56:13	22	16:58:06	22
16:56:15	23	16:58:09	23
16:56:18	24	16:58:27	24
16:56:24	25	16:58:29	25

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16:58:34	1	16:59:42	1
16:58:40	2	16:59:43	2
16:58:43	3	16:59:44	3
16:58:44	4	16:59:58	4
16:58:45	5	17:00:03	5
16:58:51	6	17:00:06	6
16:58:54	7	17:00:08	7
16:58:55	8	17:00:19	8
16:59:00	9	17:00:27	9
16:59:05	10	17:00:32	10
16:59:08	11	17:00:38	11
16:59:13	12	17:00:38	12
16:59:13	13	17:00:41	13
16:59:15	14	17:00:44	14
16:59:19	15	17:00:47	15
16:59:22	16	17:00:50	16
16:59:22	17	17:00:53	17
16:59:24	18	17:00:53	18
16:59:29	19	17:00:59	19
16:59:29	20	17:01:01	20
16:59:30	21	17:01:01	21
16:59:32	22	17:01:05	22
16:59:32	23	17:01:09	23
16:59:37	24	17:01:11	24
16:59:40	25	17:01:14	25
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17:01:22	1	17:02:44	1
17:01:25	2	17:02:51	2
17:01:29	3	17:02:55	3
17:01:30	4	17:02:56	4
17:01:33	5	17:02:59	5
17:01:34	6	17:03:03	6
17:01:39	7	17:03:17	7
17:01:41	8	17:03:17	8
17:01:45	9	17:03:18	9
17:01:50	10	17:03:19	10
17:01:54	11	17:03:20	11
17:01:57	12	17:03:22	12
17:02:01	13	17:03:23	13
17:02:01	14	17:03:28	14
17:02:05	15	17:03:33	15
17:02:05	16	17:03:37	16
17:02:10	17	17:03:38	17
17:02:13	18	17:03:41	18
17:02:17	19	17:03:50	19
17:02:20	20	17:03:55	20
17:02:24	21	17:03:56	21
17:02:25	22	17:03:57	22
17:02:29	23	17:04:08	23
17:02:34	24	17:04:12	24
17:02:37	25	17:04:19	25

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17:04:26	1 support your claim of discrimination based on age, sex,	17:07:05	1 you see on that page?
17:04:29	2 religion or disability. They also found that there is no	17:07:06	2 A. Two.
17:04:37	3 cause to support your claim of retaliation, end of quote;	17:07:07	3 Q. Actually, it's just one. It's the Utah
17:04:39	4 is that correct?	17:07:15	4 Protection of Public Employees Act. Do you see that?
17:04:39	5 A. That's what the letter, yes.	17:07:16	5 A. I do.
17:04:41	6 Q. Okay, and my understanding is that you did	17:07:16	6 Q. And how many causes of actions did we just go
17:04:49	7 file an appeal to this and, in fact, all the way to the	17:07:20	7 through on your first amended complaint?
17:04:56	8 President's Office but the president declined to hear	17:07:24	8 A. I don't know, nine, ten.
17:05:00	9 your appeal; is that correct?	17:07:27	9 Q. Twelve.
17:05:01	10 A. Yes.	17:07:30	10 A. Twelve.
17:05:38	11 (Whereupon Exhibit 99 was marked for identification.)	17:07:31	11 Q. So does your notice of claim contain a breach
17:05:38	12 BY MS. DONOSSO:	17:07:40	12 of contract claim?
17:05:54	13 Q. Do you recognize this document, Dr.	17:07:44	13 MS. LEONARD: You can answer.
17:05:57	14 Zimmerman?	17:07:45	14 THE WITNESS: I don't know.
17:06:00	15 A. I'm just looking at it.	17:07:46	15 BY MS. DONOSSO:
17:06:02	16 Q. This is the notice of claim that was provided	17:07:47	16 Q. Well, this one -- so the Utah Protection of
17:06:09	17 to us by your then attorney, Lisa Peterson, and it's	17:07:49	17 Public Employees Act, that is your first cause of action,
17:06:18	18 dated October 25th of 2013. Have you seen a copy of this	17:07:53	18 that is the whistleblower's claim, so that one is
17:06:22	19 before?	17:07:57	19 contained in your notice of claims. Do you see your
17:06:23	20 A. I may have. I don't recall.	17:07:59	20 second clause of action? Do you see your breach of
17:06:25	21 Q. Okay. I'd like to draw your attention --	17:08:02	21 contract claim listed in here?
17:06:37	22 it's very lengthy.	17:08:04	22 A. No.
17:06:38	23 A. Yeah.	17:08:04	23 Q. Do you see your third cause of action, your
17:06:40	24 Q. -- to the last page, which is the statement	17:08:07	24 property interest and violation of Section 1983?
17:06:46	25 of claim, it's JPZ 00021. How many causes of actions do	17:08:10	25 A. No.
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17:08:10	1 Q. Do you see your fourth cause of action, your	17:09:05	1 Q. Do you see your tenth cause of action, your
17:08:13	2 due process and violation of the Utah Constitution?	17:09:07	2 violation of ADEA?
17:08:18	3 A. No.	17:09:10	3 A. No.
17:08:19	4 Q. Do you see your fifth cause of action, your	17:09:10	4 Q. Do you see your eleventh cause of action,
17:08:23	5 deprivation of liberty interests and violation of Section	17:09:14	5 your discrimination based on Title 7 based on religion?
17:08:28	6 1983?	17:09:20	6 A. No.
17:08:29	7 A. No.	17:09:20	7 Q. Do you see your twelfth cause of action, your
17:08:29	8 Q. Do you see your sixth cause of action, your	17:09:24	8 wrongful termination and violation of public policy?
17:08:31	9 deprivation of liberty interest and violation of the Utah	17:09:27	9 A. No.
17:08:33	10 Constitution?	17:10:24	10 (Whereupon Exhibit 100 was marked for identification.)
17:08:33	11 A. No.	17:10:24	11 BY MS. DONOSSO:
17:08:33	12 Q. Do you see your seventh cause of action, your	17:10:25	12 Q. Do you recognize this document, Dr.
17:08:38	13 deprivation of First Amendment Rights in violation of	17:10:27	13 Zimmerman?
17:08:43	14 Section 1983?	17:10:27	14 A. Yes.
17:08:45	15 A. No.	17:10:28	15 Q. And it actually has three different
17:08:45	16 Q. Do you see your eighth cause of action, your	17:10:32	16 certificates, so maybe you want to flip through them.
17:08:47	17 deprivation of right of free speech and violation of the	17:10:35	17 The first one is a HIPAA Basics, the second one is a
17:08:49	18 Utah Constitution?	17:10:39	18 HIPAA Academic and Research and the third one is
17:08:50	19 A. No.	17:10:42	19 Information, Security Advanced. They're all dated
17:08:51	20 Q. Do you see your ninth cause of action, your	17:10:44	20 May 31st of 2009. How often, while you were employed at
17:08:54	21 violation of ADA?	17:10:54	21 the University of Utah, did you conduct these HIPAA and
17:08:55	22 A. We were waiting for a right to sue. We need	17:11:01	22 information security trainings?
17:08:58	23 a right to sue from Phoenix before we could file that.	17:11:03	23 MS. LEONARD: Object to foundation and she
17:09:02	24 Q. Okay, but do you see it in here?	17:11:07	24 didn't conduct anything.
17:09:04	25 A. No.	17:11:07	25 BY MS. DONOSSO:

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17:11:08	1 Q. I mean, not conduct. Sorry, I didn't eat	17:21:50	1 Q. Have you ever had any discrimination
17:11:11	2 lunch. How often were you required to attend these HIPAA	17:21:52	2 complaints made against you?
17:11:19	3 research and information security trainings as part of	17:21:53	3 A. Yes.
17:11:23	4 your employment?	17:21:53	4 Q. By whom?
17:11:24	5 A. I don't recall.	17:21:55	5 A. Jerilyn NuNu and an employee at the health
17:11:25	6 Q. Did you attend one in at least the spring of	17:22:02	6 department.
17:11:32	7 2012?	17:22:02	7 Q. Okay, so let's focus on the ones on Jerilyn
17:11:34	8 A. As I recall, they're online.	17:22:08	8 NuNu because those were the ones at the university.
17:11:37	9 Q. Right. That's what others have testified.	17:22:11	9 Okay. This is going to be 101.
17:11:40	10 So would the last one that you attended have been this	17:22:23	10 (Whereupon Exhibit 101 was marked for identification.)
17:11:43	11 one in 2009 --	17:22:23	11 BY MS. DONOSSO:
17:11:44	12 A. No.	17:22:24	12 Q. What was the nature of Jerilyn NuNu's
17:11:44	13 Q. -- or would there have been others following	17:22:27	13 complaints?
17:11:47	14 this one?	17:22:27	14 A. After she was terminated, she made a
17:11:48	15 A. There would likely be others.	17:22:35	15 complaint with I believe the university OEO and I recall
17:11:50	16 Q. Okay, so it's fair to say that when you	17:22:44	16 it had something to do with -- she believed she was
17:12:01	17 removed the clinicians notes and the hard drive from the	17:22:51	17 terminated because I discriminated against her. I think
17:12:08	18 university in the spring of 2013, you at least had some	17:23:00	18 it had to do with some gay/lesbian issues and it was
17:12:12	19 basic HIPAA and security information training during your	17:23:07	19 against my religion as a chaplain.
17:12:18	20 tenure at the University of Utah; is that correct?	17:23:10	20 Q. Actually it was because of her sexual
17:12:20	21 A. Yes.	17:23:13	21 orientation and her religion.
17:12:23	22 Q. So let's take a break and then we'll come	17:23:16	22 A. Oh, okay.
17:12:26	23 back and finish up my other exhibits.	17:23:18	23 Q. Do you know what her religion was?
17:18:12	24 (Whereupon a recess was taken.)	17:23:27	24 A. No.
17:18:12	25 BY MS. DONOSSO:	17:23:27	25 Q. Why do you believe she felt that she was
Page 207		Page 208	
17:23:29	1 being discriminated against because of her sexual	17:25:15	1 A. I don't know. I never heard back.
17:23:31	2 orientation or religion?	17:25:17	2 Q. Okay.
17:23:33	3 A. I don't know.	17:25:22	3 A. She was not terminated over the thumb drive.
17:23:34	4 Q. So you never made any comments regarding her	17:25:34	4 Q. What was she terminated for?
17:23:42	5 sexual orientation and her religion?	17:25:37	5 A. Performance issues and privacy concerns.
17:23:45	6 A. No. I didn't know what her sexual	17:25:41	6 Q. Okay.
17:23:48	7 orientation was. I don't recall. Maybe she did disclose	17:26:16	7 (Whereupon Exhibit 102 was marked for identification.)
17:23:53	8 her religion. I don't recall her religion.	17:26:16	8 BY MS. DONOSSO:
17:24:02	9 Q. Okay. Did anybody ever discuss her complaint	17:26:17	9 Q. Do you recognize this document?
17:24:09	10 with you?	17:26:19	10 A. I do.
17:24:09	11 A. Krista Pickens came to my office and she	17:26:20	11 Q. Okay. Can you tell me what it is?
17:24:15	12 asked me some questions and that was the last I'd heard	17:26:22	12 A. It looks like a printout of my curriculum
17:24:18	13 of it.	17:26:31	13 vitae from the university's MBM system.
17:24:19	14 Q. Okay. Were you -- and did you ever meet her	17:26:35	14 Q. I recognize that it looks like it was just
17:24:24	15 partner?	17:26:37	15 last dated July of 2012; is that correct?
17:24:24	16 A. I believe I met her, I didn't know she was	17:26:40	16 A. Yes, that's what it says.
17:24:35	17 her partner, her friend when she picked her up at the	17:26:44	17 Q. Okay, so it may not be your most recent CV,
17:24:41	18 airport.	17:26:52	18 at least this is what was going on when you were
17:24:42	19 Q. So she was the one that was terminated for	17:26:56	19 terminated from the university. So according to this,
17:24:52	20 one of the flash drive issues and performance issues.	17:27:01	20 you have a bachelor's degree in speech pathology; is that
17:24:57	21 She alleges that she did not start having these issues	17:27:06	21 correct?
17:24:59	22 until you met her partner at the airport. Were you ever	17:27:06	22 A. Yes.
17:25:05	23 interviewed and had to address that with Krista?	17:27:06	23 Q. You have a Ph.D. in language pathology; is
17:25:07	24 A. Yes.	17:27:11	24 that correct?
17:25:08	25 Q. Okay, and what was the result of that?	17:27:12	25 A. It's speech language pathology.

52 (Pages 205 to 208)

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17:27:14	1 Q. Okay, and you were employed by the Department	17:28:53	1 Q. As well as on Page 4, and then I'd like to
17:27:22	2 of Health from 1996 to 2005 and then by the University of	17:29:05	2 draw your attention to Pages 5 and 6, so this is where it
17:27:28	3 Utah from 2005 through June of 2013 but obviously that's	17:29:10	3 lists your various peer review journal articles?
17:27:36	4 not here, but would that be an accurate representation of	17:29:15	4 A. Yes.
17:27:41	5 your work history?	17:29:15	5 Q. So you previously testified that one of your
17:27:42	6 A. So tell me -- so say that again.	17:29:18	6 articles was I guess recalled or rescinded due to bad
17:27:44	7 Q. So according to this, it says you were at the	17:29:22	7 information. Which one is that one in here? Which
17:27:48	8 Department of Health from 1996 through 2005 and then you	17:29:25	8 number is that? It was one from 2011 you said?
17:27:54	9 were at the University of Utah from 2005 and then here it	17:29:39	9 A. It's No. 9.
17:27:59	10 says through the present but obviously we know that you	17:29:40	10 Q. Okay, so No. 9, okay. So in total, you have
17:28:02	11 were employed through June of 2013 at the University of	17:29:46	11 11 publications instead of 12; is that correct?
17:28:06	12 Utah; is that correct?	17:29:51	12 A. Yes.
17:28:06	13 A. It says I was employed from the health	17:29:52	13 Q. But prior to coming to the University of
17:28:09	14 department from 1978 to 2005.	17:30:02	14 Utah, you only had two peer review journals. I'm going
17:28:11	15 Q. Okay. Thank you, so 1978 to 2005. Thank	17:30:06	15 to go by the numbers. One and two; is that correct?
17:28:16	16 you. During that time, you also had various other	17:30:10	16 A. And three.
17:28:21	17 positions, for example, you're an instructor and a	17:30:19	17 Q. Well --
17:28:25	18 clinical supervisor and research assistant at other	17:30:20	18 A. Excuse me, you're right, one and two.
17:28:29	19 various places, including being a chaplain at St. Mark	17:30:22	19 Q. So approximately about 70 percent of your
17:28:33	20 and Jordan Valley in 2008 and 2009; correct?	17:30:29	20 publications happened while you were employed at the
17:28:39	21 A. Yes.	17:30:31	21 University of Utah?
17:28:39	22 Q. And then on Page 3 it lists some of the	17:30:33	22 A. Yes.
17:28:48	23 various grants that you've been involved in throughout	17:30:34	23 Q. Okay, and actually -- let's see, at least
17:28:51	24 the years?	17:30:49	24 four out of the -- four out of the ten, so almost like
17:28:53	25 A. Yes.	17:30:58	25 60 percent of those. Four out of the seven that you
Page 211		Page 212	
17:31:05	1 published at the University of Utah happened during	17:33:25	1 retracted.
17:31:08	2 Amanda Bakian's tenure or after 2010.	17:33:27	2 Q. I thought nine was the one that was
17:31:14	3 A. So -- so just let me clarify, most of these	17:33:29	3 retracted.
17:31:19	4 studies were published using data I collected while I was	17:33:29	4 A. Excuse me, nine is retracted, and she was
17:31:24	5 an employee at the health department, so.	17:33:33	5 listed on ten, but that was mostly from the work of
17:31:30	6 Q. But you were an employee of the health	17:33:43	6 Satterfield, not Bakian.
17:31:33	7 department until 2005.	17:33:48	7 Q. But Satterfield is listed on ten, not nine?
17:31:35	8 A. And they allowed me to take the data with me	17:33:52	8 A. So Satterfield is listed on -- so Bakian did
17:31:37	9 to the university, which I used to publish No. 4, 5, 6,	17:33:57	9 the epidemiology support for nine, which was retracted.
17:31:50	10 7, 8, 9.	17:34:02	10 Q. Retracted.
17:31:55	11 Q. So you were using the health department's --	17:34:04	11 A. Ten, Satterfield did the majority of the
17:31:58	12 A. Ten.	17:34:08	12 work, and on No. 6, Satterfield did the majority of the
17:31:59	13 Q. Right, okay, I got 10. But, nevertheless,	17:34:15	13 work but was not credited. So the only one, unless I'm
17:32:30	14 you published all of these while you were an employee of	17:34:37	14 missing something, that Bakian was on is No. 10 and she
17:32:34	15 the University of Utah, a vast majority of these?	17:34:42	15 did not do most of the work.
17:32:39	16 A. Of the articles, yes.	17:34:53	16 Q. Okay. I think I'm done for now because I
17:32:41	17 Q. And even the ones that you just named off	17:35:39	17 want to reserve some of my time for follow-up questions.
17:32:46	18 that used the data of the Department of Health?	17:35:44	18 MS. LEONARD: I don't have any questions.
17:32:48	19 A. Yes.	17:35:47	19 MS. DONOSSO: Oh, okay. Let me quickly
17:32:49	20 Q. A lot of these involved having as a coauthor	17:35:49	20 consult with my co-counsel then.
17:32:54	21 either Bilder or Bakian?	17:35:49	21 (Whereupon a recess was taken.)
17:32:55	22 A. Let's see, the one that was retracted was a	17:35:49	22 BY MS. DONOSSO:
17:33:01	23 Bakian article. Satterfield did most of the work on 10.	17:46:45	23 Q. Do you recall when you spoke with Mr. Sperry
17:33:08	24 Q. Then why isn't he listed on 10?	17:46:49	24 for the first time?
17:33:11	25 A. He is. So Bakian is listed on 10, which was	17:46:50	25 A. I want to say 2010.

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17:46:54	1 Q. Do you remember approximately a month?	17:48:12	1 archived E-mails from the university and have not gotten
17:46:57	2 A. I don't.	17:48:16	2 them and they are on my archived E-mails that I was
17:46:58	3 Q. Okay, and what concerns did you share with	17:48:20	3 not -- that I didn't have access to.
17:47:02	4 him at that time?	17:48:23	4 Q. All right. Do you recall when you talked to
17:47:03	5 A. Just the general atmosphere of the department	17:48:29	5 Dr. Parks for the first time?
17:47:15	6 and my concerns about the chairman taking credit for my	17:48:31	6 A. For sure in 2011, and I may have talked to
17:47:24	7 work.	17:48:41	7 him once before that but I don't recall. There, again,
17:47:24	8 Q. Did you speak with him over the phone? In	17:48:44	8 my E-mails would be -- so there should be E-mails. They
17:47:28	9 person?	17:48:49	9 should have E-mails. We haven't gotten those either.
17:47:29	10 A. I met with him in person two or three times.	17:48:52	10 Q. And what concerns did you share with him?
17:47:32	11 Q. During the same month or over the same year?	17:48:55	11 A. The first time was that I shared with him the
17:47:37	12 A. No, over a two-year period.	17:49:01	12 situation in the department. I shared with him concerns
17:47:39	13 Q. Starting sometime in 2010?	17:49:13	13 that other faculty had shared with me about McMahon and I
17:47:41	14 A. As I recall.	17:49:21	14 asked him IRB questions. The second time I met with --
17:47:42	15 Q. Did you ever document your conversations in	17:49:27	15 the second or third time I met with him, I shared with
17:47:45	16 writing?	17:49:32	16 him my concerns that a study that I had originated in
17:47:46	17 A. With him?	17:49:39	17 2007 and my grant activities were being turned over to
17:47:47	18 Q. Yes.	17:49:45	18 younger female faculty and -- and I shared concerns about
17:47:48	19 A. It would be my E-mails and he did tell me	17:49:59	19 privacy as well that basically I had funded, helped given
17:47:51	20 that he would help me file a discrimination -- no, an	17:50:10	20 all the data to an individual who then took the research
17:47:57	21 ethics complaint, but when I went to go back, he had	17:50:15	21 to another, to a different research group, and he said
17:48:01	22 abruptly left the university.	17:50:22	22 he'd never heard of that before.
17:48:04	23 Q. Do you have copies of these E-mails that you	17:50:24	23 Q. Did you speak with him over the phone? In
17:48:09	24 sent to him?	17:50:29	24 person?
17:48:09	25 A. I'll have to look but we've asked for	17:50:29	25 A. In person.
Page 215		Page 216	
17:50:30	1 Q. At his office? Your office?	17:51:51	1 THE WITNESS: I filed a written E-mail to
17:50:32	2 A. Yes.	17:51:53	2 Botkin. I filed a complaint to Parks about withholding
17:50:34	3 Q. Did you document any of these conversations	17:51:59	3 my approvals.
17:50:37	4 in writing?	17:52:01	4 MR. ROBINSON: Did you file an official
17:50:38	5 A. I did, just that I met with him and then I	17:52:03	5 complaint with Parks?
17:50:43	6 documented -- so one of my approvals for a study that was	17:52:05	6 THE WITNESS: I don't know what the official
17:50:48	7 in progress was being held up until I put McMahon's	17:52:06	7 complaint process is. I don't know what -- I was told I
17:50:57	8 friend on the study and I documented that and I sent	17:52:15	8 couldn't. I couldn't appeal any performance evaluations.
17:51:02	9 those concerns to Dr. Parks as well.	17:52:15	9 BY MS. DONOSSO:
17:51:05	10 Q. Did you ever officially file any complaints	17:52:25	10 Q. So other than meeting with him and asking for
17:51:09	11 with either Dr. Sperry or Dr. Parks or were these just	17:52:27	11 advice, you never actually filed any form of formal
17:51:15	12 E-mails where you were expressing your concerns and	17:52:32	12 complaint with either Dr. Sperry or with Dr. Parks?
17:51:18	13 asking for advice?	17:52:35	13 A. I thought my complaints were formal, that I
17:51:19	14 A. I never got a sense that they would help me.	17:52:37	14 went in and I met with them and I told them what was
17:51:29	15 MR. ROBINSON: So the answer is, no, you	17:52:40	15 going on and that was official. They never asked me to
17:51:32	16 didn't?	17:52:43	16 fill out any paperwork or forms.
17:51:32	17 THE WITNESS: I believe my complaints were	17:52:47	17 Q. So would your answer be yes or no?
17:51:34	18 official by meeting with them and telling them of them	17:52:49	18 A. No. No. Yes, I filed. I believe I filed
17:51:37	19 and they knew of other complaints.	17:52:53	19 complaints.
17:51:39	20 MR. ROBINSON: But you didn't file a written	17:52:53	20 MR. ROBINSON: In writing?
17:51:41	21 complaint?	17:52:54	21 BY MS. DONOSSO:
17:51:41	22 THE WITNESS: Other than Sperry offered to	17:52:55	22 Q. In writing? Did you give them something in
17:51:46	23 help me do that.	17:52:57	23 writing, like here's my complaint, here's my history?
17:51:48	24 MR. ROBINSON: But you didn't file a written	17:52:59	24 A. Yes.
17:51:50	25 complaint?	17:53:00	25 Q. What did you give them in writing?

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<p>17:53:02 1 A. I gave them E-mails. I gave Botkin E-mails. 17:53:08 2 MR. ROBINSON: We're not talking about 17:53:08 3 Botkin. 17:53:08 4 BY MS. DONOSSO: 17:53:09 5 Q. We're not talking about Botkin. We've gone 17:53:10 6 over the written information for Botkin. But during this 17:53:14 7 timeframe in 2010 and 2011 with Drs. Sperry and Parks, 17:53:18 8 you were meeting with them and sharing with them your 17:53:21 9 concerns. Did you actually give them -- 17:53:23 10 A. I'd have to look at the E-mails. 17:53:25 11 Q. -- a formal complaint? 17:53:25 12 A. I don't know how you define formal complaint. 17:53:27 13 I met with them. I told them my concerns. I documented 17:53:31 14 that I met with them. I documented the issues. 17:53:34 15 MR. ROBINSON: Let's try it this way: Did 17:53:37 16 you give them anything in writing other than E-mails? 17:53:41 17 THE WITNESS: I was not asked to. 17:53:44 18 MR. ROBINSON: So the answer is? 17:53:46 19 THE WITNESS: No. 17:53:48 20 MR. ROBINSON: Okay. 17:53:48 21 BY MS. DONOSSO: 17:53:52 22 Q. Other than Dr. Sperry and Dr. Parks, did you 17:53:57 23 meet with anybody else prior to your meeting with Jeff 17:54:06 24 Botkin in April of 2011? 17:54:08 25 A. Yes.</p>	<p>17:54:08 1 MR. ROBINSON: In which you expressed 17:54:10 2 concerns? 17:54:10 3 BY MS. DONOSSO: 17:54:11 4 Q. Regarding Dr. McMahon. 17:54:12 5 A. Yeah, I met with Sperry before. 17:54:15 6 Q. Other than Sperry and Parks, prior to April 17:54:19 7 of 2011, did you meet with anybody else where you 17:54:22 8 expressed concerns? 17:54:23 9 A. At the university? 17:54:24 10 Q. At the university where you expressed 17:54:26 11 concerns regarding Dr. McMahon. 17:54:28 12 A. I met with my mentor. 17:54:40 13 MR. ROBINSON: Who was? 17:54:42 14 THE WITNESS: Macintosh. 17:54:42 15 BY MS. DONOSSO: 17:54:45 16 Q. What concerns did you express to him? 17:54:48 17 A. The same ones that everybody knew about in 17:54:53 18 the department. 17:54:55 19 Q. And did you give him anything in writing that 17:55:00 20 he could use that could be viewed as a formal complaint? 17:55:04 21 A. He would not -- he did not -- he saw that he 17:55:09 22 was powerless and couldn't help me. 17:55:11 23 Q. So would that be yes or no? 17:55:13 24 A. So the question is did I give -- 17:55:18 25 Q. Dr. Macintosh any type of like written</p>
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<p>17:55:24 1 summary, formal complaint regarding McMahon. 17:55:26 2 A. I sent him E-mails outlining the concerns I 17:55:30 3 wanted to talk to him about. 17:55:33 4 Q. Those were concerns. Did you give him a 17:55:34 5 formal complaint? 17:55:36 6 A. In terms of semantics, to me writing down a 17:55:42 7 summary of my complaints is a formal complaint. Whether 17:55:44 8 they had a formal complaint process separate from that, 17:55:46 9 no one told me. 17:55:47 10 MR. ROBINSON: So did you file anything in 17:55:51 11 writing other than E-mails? 17:55:53 12 THE WITNESS: To Botkin. 17:55:54 13 MR. ROBINSON: No, to Dr. Macintosh. 17:55:54 14 BY MS. DONOSSO: 17:55:55 15 Q. No, to Dr. Macintosh. 17:55:56 16 A. Just E-mails. 17:55:57 17 Q. Okay, so other than Dr. Sperry and Dr. Parks 17:56:02 18 and Dr. Macintosh, did you meet with anybody, prior to 17:56:08 19 April of 2011, regarding concerns about Dr. McMahon? 17:56:12 20 A. I believe I may have met with another 17:56:18 21 department chairman, Ed Clark. 17:56:26 22 Q. And when did you meet with Ed Clark? 17:56:29 23 A. I met with him on several occasions and I'd 17:56:34 24 have to check my E-mails. 17:56:35 25 Q. Do you recall if it was prior to April of</p>	<p>17:56:36 1 2011? 17:56:38 2 A. I don't recall. I was trying to leave. I 17:56:41 3 was trying to get out of the department. I wanted to 17:56:44 4 move to a different department. 17:56:45 5 Q. So would it have been during the summer of 17:56:49 6 2012 when you were already meeting with Dean Li? 17:56:53 7 A. No, it was before that and I also met with 17:56:55 8 the health department. I met with -- 17:56:58 9 MR. ROBINSON: We're talking about the 17:56:59 10 university. 17:57:00 11 THE WITNESS: Yeah. 17:57:00 12 BY MS. DONOSSO: 17:57:01 13 Q. Okay. Anybody else that you recall? 17:57:04 14 A. Not that I recall right now. 17:57:06 15 Q. Did you make any sort of written reports or 17:57:11 16 complaints to Ed Clark regarding Dr. McMahon? 17:57:13 17 A. Ed Clark indicated that no one at the 17:57:18 18 university would help me and that he had advised me to 17:57:21 19 get as far away from McMahon as possible, which I tried 17:57:27 20 to do. 17:57:29 21 Q. So you never gave him any written complaint 17:57:32 22 or report either? 17:57:34 23 A. He did not see it as his responsibility. He 17:57:38 24 had no authority. 17:57:41 25 MR. ROBINSON: So the answer is no?</p>

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17:57:43 1 THE WITNESS: He was not the person to file a
17:57:47 2 written complaint with, so, no.
17:57:49 3 MR. ROBINSON: Very good.
17:57:51 4 BY MS. DONOSSO:
17:57:52 5 Q. Okay. Anybody else that you would have
17:57:55 6 talked to?
17:57:55 7 A. I talked to other faculty about my concerns
17:58:02 8 and they shared their experiences, but there again, they
17:58:10 9 had no authority to do anything.
17:58:14 10 Q. Okay.
17:58:15 11 A. And they had shared their concerns with
17:58:18 12 management as well.
17:58:26 13 Q. Okay, so Botkin, OEO, privacy, IRB, Sperry,
17:58:31 14 Parks.
17:58:37 15 A. My mentor, I shared my concerns with my
17:58:39 16 mentor.
17:58:40 17 Q. Macintosh.
17:58:42 18 MR. ROBINSON: Macintosh.
17:58:43 19 THE WITNESS: Oh, excuse me, my coach, my
17:58:45 20 executive coach was a vice president of HR.
17:58:45 21 BY MS. DONOSSO:
17:58:50 22 Q. Okay. What was his or her name?
17:58:51 23 A. Marry Ann Beazin.
17:58:59 24 MR. ROBINSON: Spell that.
17:59:00 25 THE WITNESS: I think B-e-a-z-i-n.

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17:59:07 1 MR. ROBINSON: And that's prior to April of
17:59:09 2 2011.
17:59:11 3 THE WITNESS: It was when -- when I started
17:59:14 4 my executive coaching, so it would have been --
17:59:17 5 MR. ROBINSON: So after June --
17:59:19 6 THE WITNESS: After my performance review --
17:59:22 7 MR. ROBINSON: After June --
17:59:22 8 MS. LEONARD: Will you let her finish?
17:59:23 9 MR. ROBINSON: Sorry.
17:59:23 10 BY MS. DONOSSO:
17:59:24 11 Q. So this would have been after June of 2011
17:59:26 12 when you had your outline of expectations meeting?
17:59:30 13 A. Yes.
17:59:30 14 Q. Okay. Anybody else that you can recall?
17:59:40 15 A. Not right off.
17:59:43 16 Q. Okay.
17:59:49 17 MS. LEONARD: Okay.
17:59:50 18 MS. DONOSSO: Okay.
17:59:51 19 MS. LEONARD: We're done.
20 (Whereupon the deposition concluded at 5:59 p.m.)
21
22
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24
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1 Case: Zimmerman V University of Utah
Case No.: 2:13cv1131
2 Deposition Date: September 16, 2015
Reporter: Donna Ward, RPR, CSR
3
4 WITNESS CERTIFICATE
5 State of Utah)
6 ss.
County of Salt Lake)
7 I, JUDY ZIMMERMAN, HEREBY DECLARE: That I am the
8 witness referred to in the foregoing testimony; that I
9 have read the transcript and know the contents thereof;
10 that with these corrections I have noted this transcript
11 truly and accurately reflects my testimony.
12 PAGE-LINE CHANGE/CORRECTION REASON
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 No corrections were made.
21
22 JUDY ZIMMERMAN
23 SUBSCRIBED and SWORN to before me on this _____ day of
24 _____, 2015.
25 Notary Public

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1 STATE OF UTAH)
2)
3 COUNTY OF UTAH)
4
5 I, DONNA M. WARD, a Certified Shorthand Reporter,
Registered Professional Reporter, certify:
6
7 That the deposition of JUDY ZIMMERMAN was taken
8 before me pursuant to Notice at the time and place
9 therein set forth, at which time the witness was by me
10 duly sworn to testify the truth.
11 That the testimony of the witness and all
12 objections made and all proceedings had at the time of
13 the examination were recorded stenographically by me and
14 were thereafter transcribed. And I hereby certify that
15 the foregoing deposition transcript is a full, true, and
16 correct record of my stenographic notes so taken.
17
18 I further certify that I am neither counsel for or
19 related to any party to said action nor in anywise
20 interested in the outcome thereof.
21
22 IN WITNESS WHEREOF, I have hereunto subscribed my
23 hand and affixed my official seal this 16th day of
24 September, 2015.
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Donna M. Ward
DONNA M. WARD, CSR, RPR
Certified Shorthand Reporter
Registered Professional Reporter



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